882

SUPREME COURT OF THE UNITED STATES.

No. 49.

THE LIFE AND FIRE INSURANCE COMPANY OF NEW YORK, PLAINTIFF,

VERSUS

THE HEIRS OF NICHOLAS WILSON.

ON MOTION FOR A MANDAMUS TO THE DISTRICT COURT U. S. FOR THE EASTERN DISTRICT OF LOUISIANA.

INDEX.

	Original.	[Print.
Petition to the Supreme Court U. S. for a mandamus	1	2
Affidavit of Jacob Barker to petition	31	17
Document No. 1, referred to in petition	32	17
Do No. 2, do do do	38	22
Do No. 3, do do do	46	26
Do No. 4, do do do	49	28
Do No. 5, do do do	54	31
Do No. 6, do do do	58	33
Do No. 7, do do do	59	34
Do No. 8, 9, do do do	61	35
Do No. 10, do do do	62	36
Do No. 11, 12, do do do	63	36, 37
Do No. 13, do do do	65	38
Do No. 14, do do do	66	38
Do No. 15, 16, do do do	67	39
Do No. 17, do do do	68	39
Do No. 18, do do do	69	40
Do No. 19, do do do	71	41
Do No. 20, do do do	73	41
Do No. 21, do do do	77	44
Do No. 22, do do do	78	44
Do No. 23, 24, do do do	79	45
Do No. 25, 26, do do do	80	46
Do No. 27, 28, do do do	83	47
Do No. 29, do do do	84	47
Do No. 30, do do do	85	48
Do No. 31, do do do	86	49
Do No. 32, do do do	87	49
Do No. 33, do do do	88	50
Do No. 34, do do do	89	50

	Original.	Print.
Document No. 35, referred to in petition - - - - - - -	90	51
Do No. 36, do do do - - - - - - -	92	53
Do No. 37, do do do - - - - - - -	95	54
Do No. 38, do do do - - - - - - -	99	56

THE LIFE AND FIRE INSURANCE COMPANY OF NEW YORK *vs.* THE HEIRS OF NICHOLAS WILSON, } *No. 2,415, District Court of the United States, Eastern District of Louisiana.*

To the honorable the Supreme Court of the United States.

The petition of the plaintiffs above-named respectfully represents:

That Nicholas Wilson, late of Iberville, Louisiana, deceased, on the 14th January, 1824, executed and acknowledged at New Orleans, before a notary public, a mortgage of a certain plantation called the Evergreen, in Iberville, aforesaid, with the appertenances to the same belonging; and, also, thirty-five slaves, particularly named in said mortgage, for securing to your petitioners divers sums of money, amounting together to $26,018 75, and to be paid at the following periods: $20,000 in five equal annual payments; the first payment to be made on the 18th January, 1825; $1,200, other part thereof, in six months from the 18th November, 1823; $960, in eighteen months; $720, in thirty months; $480, in forty-two months, $240, in fifty-four months; $967 50, in twelve months; $725, in twenty-four months; $483 75, in thirty-six months; and $242 50, in forty-eight months; all from the same 18th November, 1823, with interest; and, for the whole of which sums, the said Wilson passed his promissory notes, as per copy of mortgage herewith, No. 1; that said Nicholas Wilson, after the execution of said mortgage, departed this life. The estate of the said Wilson was, in consequence of his death, adjudicated on the 20th November, 1825, to his widow, as per copy hereunto annexed, No. 2; that no part of the said debt or sums of money having been paid, the widow entered into a transaction or compromise, for the purpose of postponing the payment, which being approved by a family meeting, as per copy hereunto annexed, No. 3, the said transaction or compromise was executed before a notary by the widow, by the legal representative of the heirs, and by the endorsor of the notes; and, also, by the attorney of your petitioners, on the 16th May, 1826, as per copy hereunto annexed, No. 4; that a certain judgment was, in furtherance thereof, entered on the books of the U. S. court, for the eastern district of Louisiana, which the honorable T. B. Robertson, then the presiding judge, died without signing, he having refused on account of sickness.

Your petitioners further represent that they sold, delivered, and conveyed the said notes, debt, judgment, securities, &c., therunto appertaining, on the 28th July, 1826, to Josiah Barker, in trust for the Mercantile Insurance Company of New York, with power to use the names of your petitioners in the collection thereof, as per copy hereunto annexed, No. 5; and your petitioners further represent that they have no interest in the said claim; that the whole amount thereof, with interest and cost, remains due the Mercantile Insurance Company of New York.

Your petitioners further represent, that the honorable Samuel H. Harper, successor to Judge Robertson, having refused to sign the aforesaid judgment,

application was made to this honorable court for relief in the premises. Your honors granted a mandamus, at the last term of this court, commanding Judge Harper to sign the said judgment, and to order execution thereon, as per copy hereunto annexed, No. 6.

Your petitioners further represent that the said mandamus was presented to the honorable Samuel H. Harper, judge of the district court of the United States for the eastern district of Louisiana, on the 7th day of March, following; that his honor thereupon signed the judgment which had been entered on the minutes of the court on the 18th day of May, 1826, as per copy hereunto annexed, No. 7, when permission was asked of the said district court to enter a further judgment on the records of the court for the notes due subsequent to the 16th day of May, 1826: a paper to that effect was drawn up and presented to his honor Judge Harper, who refused its entry, and said that he should not sign any thing more than the judgment which Judge Robertson had omitted to sign, and order execution to issue thereon, superadding that he considered the whole question settled by the mandamus, and that it would be the duty of the clerk to issue an execution for the amount of all the notes mentioned in the compromise.

It was urged that your petitioners, their successors, and attorneys, had full authority, acccompanied by a vested right, and was therefore irrevocable, to enter up judgment, by confession, on all the notes mentioned in the compromise and referred to in the decree of the court, which became due subsequent to the 16th day of May, 1826; that the compromise originally contemplated further action before execution under it should issue; that such further action had been neglected by the defendants, and had not been performed in consequence of the judgment not having been signed; that there had been a stay of execution until all the notes should reach maturity, with an express reservation of all the plaintiffs' liens, mortgages, and preferences in and over the property mortgaged; that the notes were all to be embraced in one execution, and that the probable meaning of the mandamus, *when it required his honor Judge Harper to order the execution*, was, that the records of the district court should be so made, as for it to be the duty of the clerk to issue the execution contemplated by the compromise and judgment, without any special order from the court to do so; that if he should do it without a further confession of judgment, it might be deemed defective, if it was not the intention of the Supreme Court to direct execution for the amount of all the notes without such formality. His honor Judge Harper said that, without notice to the defendants, he would not allow any further judgment to be entered up; when he was requested to have a rule entered, requiring the clerk to issue execution for the amount of all the notes, which he declined, saying, that a rule might be entered ordering execution for the *whole* amount of the judgment; that if the clerk asked his advice, he should advise him that the mandamus embraced all the notes; but that the clerk knew his own duties, and must perform them; superadding, that the execution must be issued on the responsibility of the plaintiffs, and not of the court.

Your petitioners further represent that on the following day an inquiry was made of the court, as to the effect and consequence of taking out an execution for too large an amount; his honor Judge Harper replied that, on application from the defendants, and on being convinced of that fact, he should reduce it to the proper amount; and that it would not be wholly bad on account of such excess, when the rule, as per copy hereunto annexed,

No. 8, was entered, and the clerk required by the trustee of the claim to issue an execution for the amount of all the notes which he did issue, as per copy hereunto annexed, No. 9, and before this execution was delivered by the clerk to the marshal, it was objected to on the ground that it directed the seizure of other property before that of the mortgaged premises; the clerk, notwithstanding such objection, delivered the execution to the marshal, when the marshal was immediately, by letter, as per copy hereunto annexed, No. 10, requested to return the same not executed, and the clerk, by letter, as per copy hereunto annexed, No. 11, required to issue a new execution.

Your petitioners beg leave further to represent to this honorable court, that in consequence of his honor Judge Harper refusing to allow a further judgment in the case to be entered up, the trustee, on the opening of the court, on Monday morning, the 10th day of March, 1834, caused a paper confessing judgment to be read, as per copy hereunto annexed, No. 12, and asked leave to have the same entered on the clerk's minutes. The judge refused to allow such entry, or to have the paper filed without notice to the opposite party, but offered to grant a rule requiring the defendants to show cause why the judgment should not be entered. This was declined, in the belief that the parties were not entitled to notice in cases of confession of judgment, and because the distance of their residence would not permit their appearing before the court would adjourn. The judge then granted permission to file the said confession, subject to all legal exceptions; and it was accordingly so filed on the said 10th day of March, and on the 12th day of March, the clerk of the said court issued the second execution, as per copy hereunto annexed, No. 13; this execution the marshal refused to enforce without a bond of indemnity, which was accordingly given, with approved security, in the sum of sixty thousand dollars, when a seizure took place: among other things seized was a quantity of sugar, part of the crop of the past year, of the plantation mortgaged found in the sugar-house on the said plantation; which sugar the marshal released, taking a bond for its value, although forbidden to do so by your petitioners, as per copy hereunto annexed, No. 14; and which crop had, in terms, been pledged in the mortgage to the plaintiffs.

Your petitioners further represent that, on the 8th day of April, 1834, the counsel, in behalf of the claim, was served with a rule of the said district court, to show cause why the said second execution, of the 12th day of March, should not be quashed, as per copies hereunto annexed, Nos. 15 and 16. A motion, pursuant thereto, was made on the 14th day of April, 1834, which was resisted on the ground that the mortgage recorded with the notary was a judgment, and warranted the issuing of an execution without any further judgment of this court; that the original order of seizure and sale granted by Judge Robertson on the 15th day of May, 1826, as per copy hereunto annexed, No. 17, was in full force; that the compromise was a judgment; that a new judgment was unnecessary; that the whole matter had been adjudicated by the Supreme Court; that the compromise contemplated but one execution; that the proceeding was against property which could not pass to others by death, or otherwise, except subject to the claim in question; that it was a common practice to reduce amounts for which executions had been issued, by directing the marshal to give the defendants credit for the particular sum to be reduced; and that the Supreme Court probably meant, by requiring execution to be ordered, that it should be for all the notes as

contemplated by the agreements of the parties; and if such was not their meaning, nor such the import of the order of seizure and sale by Judge Robertson, the execution could be reduced, but ought not to be quashed.

Your petitioners further represent to this honorable court, that a suit, as per copies of papers hereunto annexed, Nos. 18 and 19, had been instituted in the State court against the marshal for damages, the decision of which might have been influenced by annulling the execution, and that the sugar seized had been released on bond, which bond would become extinct by quashing the whole execution, all which was urged on the consideration of Judge Harper; and that the ends of justice did not require it, inasmuch as the execution was not for any sum in the aggregate, but for the amount of each note, with interest, specifying the amount of each note and when due; that if there had been an error in taking out the execution for too large an amount, it was done at the suggestion of his honor Judge Harper; and that his honor had stated, when he made the suggestion, that if it should turn out to be for too large an amount, that it would not, on that account, be wholly bad, but liable to be reduced to the proper amount.

Your petitioners further represent that, on the 19th day of April, 1834, his honor Judge Harper delivered an opinion, as per copy hereunto annexed, No. 20, annulling the whole execution—the law requiring payment to be demanded before seizure having been repealed in 1817. The judge was informed of that fact when he struck out of his opinion the words "*three days*," but not his arguments based thereon; and said the decision would nevertheless be the same, and ordered the clerk to issue a new execution for the amount of notes due, prior to the 18th day of May, 1826, against the property mortgaged only, and to omit the order to demand payment before seizure: whereupon a rule was entered by the clerk, under the special directions of the judge, on the records of the court, as per copy hereunto annexed, No. 21; and the clerk did issue the third execution, as per copy hereunto annexed, No. 22. The marshal, before proceeding to enforce the same, required to be indemnified in the sum of sixty thousand dollars, in consequence of which the required bond and security were given.

Your petitioners further represent that, in their opinion, the facts of the case did not warrant Judge Harper in saying, "fortunately the question before me does not involve the necessity of examining the *grounds* of that judgment. I say fortunately, for it would be an Herculean labor to investigate and expose the many irregularities and illegal proceedings had in the case from the beginning to the present moment, which have equally affected the rights of all parties."

The tendency of this declaration was, in the opinion of your petitioners, to invite further litigation, prejudging the matters likely to be brought up in a new shape.

Your petitioners further represent that his honor Judge Harper was mistaken when he said "that it was clear that, at the time of entering this judgment, there was then actually due to the plaintiffs only $11,852 50:" for it was clear, by the terms of the mortgage and of the compromse, that the further sum of $720 was actually due on that very 18th day of May, 1826, the date of the judgment.

Your petitioners further represent that Judge Harper was mistaken when he said "an execution had issued, not only for the amount due, at the time of rendition of the judgment; but also for the amount for which no judgment was ever obtained," inasmuch as by the laws of Louisiana, Civil Code,

articles 3,245 a 3,249, and Code of Practice, 733–4, the mortgage of the 14th day of January, 1824, being made before Carlile Pollock, notary public, was a judgment; that the compromise before Greenbury Ridgley Stringer, esq., notary public, on the 16th day of May, 1826, was a judgment; that the judgment entered on the records of the district court on the 18th day of May, 1826, in the opinion of your petitioners, by intendment of law, embraced all the notes; if not, that when taken in connexion with the aforesaid confession, or offer to confess, it became a judgment embracing all the notes; that the order of seizure and sale of the 15th May, 1826, when taken in connexion with the condition in the compromise to stay execution, was equivalent to a judgment, and authorized the execution in question.

Your petitioners further represent that Judge Harper was also mistaken when he said "the confessions were entered up under a power granted '*before*' any judgment at all had been obtained," as all the aforesaid judgments, down to and including that of the 18th of May, 1826, were prior to the said power, which was not dated until the 28th July, 1826; which power was filed with the said S. H. Harper, then clerk of the said court, on the 23d January, 1827, is now on file, and has remained there ever since, a copy of which is hereunto annexed, No. 5, as aforesaid; and, further, in the opinion of your petitioners, the possession of the notes conveyed full power; they were all, or the most of them, endorsed by Henry Eckford, and ran as per copy of one of them, hereunto annexed, No. 23, and were all paraphed "*ne variatur.*"

Your petitioners further represent that, by the laws of Louisiana, Civil Code, art. 2,615, "the sale or transfer of a debt includes every thing which is an accessary to the same as suretiship, privileges, and mortgages." The notes in question were all filed in the said court on the 6th day of January, 1826, subsequently borrowed of the clerk to use in other suits, and again filed by the said Josiah Barker, when he demanded to have the further payment entered, and the execution issued.

Your petitioners further represent that due notice of the said assignment was, on the 16th day of December, 1826, served on S. M. Spragins, curator of the estate of Nicholas Wilson, as per acknowledgment, copy herewith, No. 24; that due notice thereof was given to the said Eliza Wilson, and subsequently, on the 2d December, 1829, the said D. D. Chesnut was notified of the said transfer; and that said Spragins was duly appointed curator, as per certificate, copy hereunto annexed, No. 25.

Your petitioners further represent that Judge Harper was also mistaken in saying that the execution issued on the 10th day of March, 1834, on which day the confession was filed, although the confession of the second judgment, as aforesaid, was not filed until the 10th day of March; permission to file and enter up the further judgment was previously prayed for, and refused by the court, as aforesaid; and that although an execution did issue on the 10th, that the one in question, to quash which the motion was made, did not issue until the 12th.

Your petitioners further represent that, in their opinion, the rule to which Judge Harper referred, when he said that an execution could not have legally issued until the expiration of three days from the rendition of the judgment, was rule 19, which is in words and figures following:

"All applications for new trials shall be made within three days of the verdict of the jury or judgment of the court, (as the case may be;) and if no such application be made, or being made, shall be overruled, judgment shall shall be signed, and execution issued if required."

Your petitioners insist that the defendant waived all benefit from this rule, by agreeing, in the article of compromise, that if the debt was not paid, "then the Life and Fire Insurance Company may obtain writ of '*fieri facias*' forthwith, and proceed with the sale of the mortgaged premises;" and that, if in this particular, they are mistaken, by being refused on the 8th of March, 1834, permission to enter up the further judgment, they were brought within its conditons by the lapse of more than three days, between demanding the further judgment and the issuing the execution; and further that the rule is believed not to apply to confessions of judgment, because, by the laws of Louisiana, Code of Practice, art. 567, there cannot be any appeal from a confession of judgment.

Your petitioners further represent that Judge Harper was also mistaken when he said the paper, purporting to be an authority to sign, was filed on the 10th day of March, the day on which the execution issued, as the execution in question did not issue until the 12th, and the authority was filed as aforesaid on the 23d day of January, 1827, and has ever since remained on the files of the court; a duplicate of said authority was, however, filed on the said 10th, and which was in court, with the notes to be filed, on the 7th day of March, 1834; it was not then filed, because the judge refused to allow the confession to be entered; and it is believed that the possession of negotiable notes gave the holder all the power necessary, under the compromise, to enter the further judgments.

The judge was, in the opinion of your petitioners, mistaken when he said the defendants were entitled to notice before the power given in the confession of judgment could be exerted; and also when he said, that one of the parties to the compromise being dead, the power given by her to confess judgment was void, the power being coupled with a vested right, and only to confess judgment against the property, it did not, in the opinion of your petitioners become void by the death of Mrs. Wilson; and there being no appeal from a confession, the right to notice is, in the opinion of your petitioners, waived or relinquished; and it has not, to their knowledge, ever been held to be the duty of an attorney to give notice to his principal before he exerted an authority given by such principal. Judge Harper does not seem to have given any weight to the fact, that the plaintiffs were prevented from proceeding to enter up the further judgment by the refusal of Judge Robertson to sign the judgment of the 18th May, 1826, which contained, in terms, the authority to enter the further judgments, and, in the opinion of your petitioners, forms part thereof.

Your petitioners further represent that, in their opinion, Judge Harper was mistaken in supposing that, before your honorable court could pass on the matter, they must have investigated the merits of the whole case which led to the compromise of the 16th May, 1826, the parties themselves having undertaken the investigation, and made a confession of the whole amount in due form of law, before a notary public, which, by the laws of Louisiana, gave to the transaction the authority of a judgment; that fact being established and admitted, the merits were not, in the opinion of your petitioners, left open for investigation, and this honorable court having, among other things, directed, by the mandamus, that execution issue, it seems to follow that they meant execution for the aggregate amount stipulated in the compromise. That transaction stipulates that execution should not issue until the last note reached maturity, and fixes, in terms, the aggregate amount of all the notes, including interest thereon up to that day; hence to be but one execution.

Your petitioners further represent that his honor Judge Harper was, in the opinion of your petitioners, mistaken, when he gives for reason for quashing the whole execution, and not reducing it, among other things, that it must correspond with the judgment; now, as the execution was for the amount of each note and interest thereon, and not for any sum in the aggregate, an order quashing that part of it appertaining to the notes, which, in the opinion of Judge Harper, did not correspond with the judgment of the 18th May, 1826, would have left the execution corresponding with the judgment as much so as a new execution did; and it would have saved much expense attendant on making distant seizures, guarding and supporting the property during the period required by law for the advertisement; the expense of a second advertisement, execution, &c.; and what was more important, under the circumstances of the case, the sugar seized had been released under bond, which bond would become void by quashing the whole execution, and the new execution was not supposed likely to reach the sugar, although, by accident and great vigilance, this proved to be otherwise.

Your petitioners further represent that his honor Judge Harper was, in the opinion of your petitioners, mistaken, when he said the parties against whom a recovery is sought were then dead; it was a judgment against the mortgaged premises, and, in the opinion of your petitioners, not against Eliza Wilson, deceased, that a judgment was required.

Your petitioners further represent that the laws of Louisiana, Civil Code, art. 3,264, say, "no right of action exists against the mortgagor for the debt of a third party, unless he bound himself, but merely an action of mortgage against the thing, to have it seized and sold."

Code of Practice, art. 21, says, "actions do not abate by the death of one of the parties after answer filed."

Your petitioners further represent that the said premises could not, and did not, by the laws of Louisiana, pass to Eliza Wilson, or the heirs, except subject to the payment of the said debt; that the said mortgage, compromise, and judgment, were all recorded in the parish where the property lay, immediately after being granted.

Civil Code, art. 937, says, "the right of possession, which the deceased had, being continued in the person of his heir, it results that this possession is transmitted to the heir, with all its defects as well as all its advantages, the change in the proprietor producing no alteration in the nature of the possession."

Code of Practice, art. 23, says, "the universal successor, or successors, by an universal title of adeceased person, such as his heirs, or universal legatees, are entitled to the same actions and exceptions, as the person to whom they succeed; but they cannot claim, on their own behalf, any right which he had not himself, for this reason, that no one can transfer a better title to another than that which he himself had."

15th sec., laws of Louisiana, 25 March, 1828, says, "heirs cannot, under any pretence whatever, receive the effects of a succession in litigation, without good and sufficient security for an amount one-quarter over and above the claims."

Your petitioners are unable to reconcile the declaration of his honor Judge Harper, that the compact, meaning the compromise and judgment, and power to confess judgment, was confined to special property, with his declaration that the application was for a judgment against Eliza Wilson, deceased.

530.

Your petitioners further represent that, in their opinion, Judge Harper was mistaken in considering the said confession as an application for separate and distinct judgments. The phraseology of the compromise, and of the judgment of the 18th May, 1826, in the opinion of your petitioners, makes them all parts of one judgment; both stipulate for a stay of execution until all the notes become due; and the compromise stipulates, in effect, that they shall all be embraced in one execution, and fixes the aggregate amount thereof, and says, if not paid at the time the last note shall arrive at maturity, then the said Life and Fire Insurance Company may obtain writ of *fieri facias* forthwith, and proceed with the sale of the mortgaged premises, according to law, to satisfy the aforesaid debt, with the interest and costs accruing thereon. The said compromise also stipulates that it should be entered upon the records of the said court of the United States for the eastern district of Louisiana, as aforesaid, and that the same shall be entered up as a decree of said court, and shall have all the force and effect as though it were entered up in open court.

And, in relation to the remark of his honor Judge Harper, "that, on the 15th day of May, 1826, three days before the original judgment was rendered, the plaintiffs applied to the court for what we call an 'order of seizure and sale,' founded on a mortgage alleged to have been given by Nicholas Wilson. This order was made by the judge, but the record does not show that a *writ* upon it ever issued from the clerk's office; at all events, it was never executed."

Your petitioners beg leave to state that no record, except the charge of the fees for the service on the fee book, is kept by the clerk of the district court of writs of seizure and sale issued out of that court; and that they are usually returned by the marshal, and retained by the clerk of the court as the record.

Whether a writ of seizure and sale issued or not, your petitioners are satisfied that enough was done, according to the understanding of all the parties and the officers of the court, to secure to the plaintiffs all the benefit that would have resulted from its having been issued, and form a levy under it having been made; that the order of seizure and sale was obtained on the 15th day of May 1826, from Judge Robertson, for the express purpose of facilitating the collection, perfecting the securites, and giving effect to the compromise, previously agreed upon, and signed on the following day; and, for which purpose, the family meeting, held six days previous, which satisfied the said compromise on the 9th May, 1826, was expressly convened; that, by the practice of Louisiana, an acknowledgment of service is, as your petitioners have been informed, considered equivalent to actual seizure; that the clerk of the district court charges the same fee, say twelve dollars, for such acknowledgment as for issuing the writ; and that it is stated on the books of the officers of the court, that service had been acknowledged, and the twelve dollars fee, charged by the clerk, collected by the deputy marshal, and handed over to the clerk. Search has been made among the papers of the marshal and clerk, and the said writ of seizure and sale not found.

Your petitioners beg leave further to represent that the laws of Louisiana, Code of Practice, art. 686, say, "when a seizing creditor has a privilege or special mortgage on the property seized, for a debt of which all the instalments are not yet due, he may demand that the property be sold for the whole of the debt, provided it be on such terms of credit as are granted to

the debtor by the original contract for the payment of such instalments as are not due."

In relation to his honor Judge Harper's saying "the parties themselves have waived this process, (the writ of seizure and sale,) for they have expressly agreed, in the act of compromise, that, in case the debt shall not be paid at the time stipulated, *a fieri facias eo nomine* shall issue, reserving, however, the right to seize specially the lands, slaves, and moveable property specially mortgaged. This is a common law writ, and is directed against all the goods of the debtor; but in this case, by compact, is confined to special property."

Your petitioners apprehend that his honor Judge Harper has put an erroneous construction on the terms of the said compact, and that its true construction is, that the defendants by the use of the word "may" therein, superadded the right of the option of the plaintiffs of choosing between the two writs, or the right to cause a *fieri facias eo nomine* to issue, in addition to a right of seizure and sale; and so far from the language of the compromise, in the opinion of your petitioners, warranting the conclusion that the parties have waived this process, all the liens and preferences are, in terms, reserved by that compact, of which reserved rights your petitioners esteem this to have been among the most important, and which has not been waived, except such be the construction of said compromise.

The entries made by the deputy clerk, when his honor Judge Harper was clerk of the court, viz., that service *had been acknowledged, and execution waived*, means only that the defendants had admitted service without an actual levy upon the property by the marshal.

Your petitioners further represent that his honor Judge Harper was mistaken when he said, on his return to a former rule granted by this honorable court, "although it is not expected that a judge will call for and sign judgments without being so required, yet it is strange that a party so much interested should not have made application to the judge, in the course of two years, to sign these judgments; and it is also remarkable, that the plaintiffs' attorneys of record, who procured the making of the judgment entries, never have to this day made any such application."

A judgment, as per copy hereunto annexed, No. 26, was drawn up in the hand-writing of Josiah Barker, then the attorney in fact of the plaintiffs, and on the 18th day of May, 1826, handed to Franklin W. Lea, esqr., then the deputy clerk of the said court, with a request for him to present the same to his honor Thomas B. Robertson, at the expiration of three days from the rendering of the said judgment, for his signature, and that, for the purpose of facilitating its completion, the judge being sick, the said Lea, some days after, wrote on the said judgment the words and figures following, viz.:

"Judgment signed 1st June, 1826."

"Judge U. S. Eastern Dist. of La."—

To which was also added, in the hand-writing of S. Livermore, deceased, who was at that time the counsel of the said heirs of the said Wilson, the following declaration:

"The foregoing appears to be according to the agreement of the parties.

"S. Livermore."

Your petitioners further represent, that the said Lea, in obedience to the request of Josiah Barker, took the said judgment to the said Judge Robertson, for his signature, on or about the first day of June, 1826; who replied that he was sick and about leaving town, and could not attend to business for any one, as per copy of the said Lea's deposition, hereunto annexed, No. 27.

Your petitioners further represent that they had supposed the judgment was signed in due course; that their attorney left New Orleans, before the said application and refusal, and was not notified of such refusal, and did not know thereof until after the death of the judge.

Your petitioners further represent that the said judgment remains on file in the said district court, and that it has not at any time been withdrawn, nor taken away, to the knowledge or belief of your petitioners, since the said 18th day of May, 1826; that the declaration on it, in the hand-writing of the said Livermore, has been erased, when or by whom your petitioners do not know, nor have they been enabled to ascertain, although diligent inquiry has been made.

On the reasoning of Judge Harper, as to the obligation of the marshal to demand payment before seizure, your petitioners think it would be surplusage to make any remark, since the law requiring such notice was repealed in 1817, and since other laws have been passed making it his imperative duty to seize on receipt of the process, and then to give notice.

Your petitioners further represent that, on the , application was made to his honor Judge Harper to sign the aforesaid confession, which was filed, as hereinbefore stated, on the 10th of March last, subject to all legal exceptions; due notice of the filing of such confession having been served on the said David D. Chesnut, testamentary executor of the late Eliza Wilson, and tutor for all the heirs of Nicholas Wilson, with the exception of one or two; proof of which notice is on file in the said district court. Whereupon Judge Harper refused to sign the same, saying "that it was not a judgment of the court; that there was no such judgment recorded in the case, consequently there was none for him to sign."

Your petitioners further represent that the United States' marshal, after receiving the aforesaid bond of indemnity, proceeded to levy on and seize the premises in question, and did advertise them for sale on the 24th of May, 1834, with the exception of the sugar, which he again released, taking a bond of indemnity, on which execution he made a return, as per copy hereunto annexed, No. 28.

Your petitioners further represent that a bill of complaint or petition, in behalf of the heirs of Nicholas Wilson, was presented to his honor Judge Harper, on or about the 17th of May, 1834, in substance, praying an injunction on all further proceedings under or by virtue of the aforesaid execution of the 19th April last, on which his honor Judge Harper delivered an opinion on the 20th day of May, in words and figures following:

"The judgment of the Supreme Court, as lately expounded by me in this case, must be carried into effect; there is no equitable defence, but from which the complainants might have appealed, if they had thought proper.

"The adjudication of the property to Mrs. Wilson] did not affect a pre-existing mortgage given by her husband; all the property was bound for his debts; it was a partnership debt, and consequently had to be paid out of the joint property.—C. Code, art. 2,372—'73; also, 937

"Although the proceedings of the family meeting may have been irregular,

and never homologated by the judge, yet the tutrix and under-tutor of the minors declared before the notary, that they were duly authorized to make the compromise that was made, otherwise the plaintiffs would not have entered into it, and a wrong of that kind cannot now be taken advantage of to their prejudice, at least, in an application to the equity power of the court.

"As to the allegation of the usury, if it be meant that the whole debt should be forfeited on that account, I consider such a principle more unjust than the greatest exaction of usury; the forfeiture of the exorbitant interest is all that, in good conscience, ought to be required; but the complainants show themselves that they have received $17,000, when the judgment against them is about $10,000 or $12,000.

"Taking all the allegations of the bill to be true, (and no doubt they are,) still they do not amount to enough to sustain it.

"It seems the plaintiffs have indemnified the marshal against the levy he has made, and if I have decided wrong they can be whipped over the shoulders of the marshal."

Your petitioners further represent that, Judge Harper was mistaken in the supposition that all, or any material allegation, contained in the bill was true, and when the motion was argued he was informed that they were false, and proof was offered to rebut the same; which proof he rejected, about three days before he indulged the expression, "and no doubt they are."

Your petitioners represent that on the promulgation of the said decision, Alfred Hennen, esq., counsel for the defendants, met the representative of the aforesaid claim in the street, and verbally informed him that he should make a new application for an injunction on the 24th of May, 1834; a written notice with copy of all the papers not on file in the cause intended to be used, including the bill of complaint, was demanded; no copies were furnished, nor written notice given. The representative of your petitioners appeared in court at the appointed time, and objected to the notice as not being "reasonable:" his honor said verbal notice in the street was good, unless defective as to time, and that three days' notice had been established to be sufficient, or was required by the laws of practice of Louisiana, and that the complainants were not bound to serve copies of the petition, or bill, or of the papers, before the argument and decision of the motion. The said Hennen then informed him that he should not bring on the motion that day. The representive of your petitioners appeared again in court on Monday morning, the 26th of May, when the said Hennen informed him that he should not proceed in the application for an injunction; that the property having been sold, there would be no use in it; and that at all events he would not proceed without giving him further notice; and on the following day notice of the following rule was received, viz.:

"UNITED STATES DISTRICT COURT, *for the Eastern District of Louisiana.*

"Holden 27th May, 1834. His honor Judge Harper present.

"LIFE AND FIRE INSURANCE COMPANY OF NEW YORK
vs.
"THE HEIRS OF NICHOLAS WILSON.

"On motion of L. Pierce, esq., in behalf of W. E. Edwards, purchaser of the property sold in this case, ordered that the marshal of this court show cause on Monday, at 10 o'clock, A. M., why he should not receive

the bonds now filed in satisfaction of the amount of the execution in the above cause, the same, with the rights therein, having been assigned to the said purchaser."

Your petitioners further represent that counsel was employed to resist this motion, who appeared in court, with the representative of the claims in question, prepared to argue it; in place of which they were called on to meet the question of an application for an injunction, which was resisted, and an affirmation read and filed in the cause, in words and figures, following:

"UNITED STATES DISTRICT COURT, *for the Eastern District of Louisiana.*

"LIFE AND FIRE INSURANCE COMPANY OF NEW YORK
vs.
"THE HEIRS OF NICHOLAS WILSON.

"Jacob Barker, being duly affirmed, says that he is the duly authorized attorney of the trustee of the claim, to recover which, the above entitled suit is pending; that his power is on file in this court; that a few days past Alfred Hennen, esq., informed this affirmant that he was preparing an application to his honor Judge Harper for an injunction, alleging, among other things, that there had been usury; that the family meeting, authorizing the judgment, was informal, illegal, and void; and that the defendants held the obligations of the plaintiffs, which he considered they had a right to set off; that, when the said application was finally prepared, this affirmant observed that all reference to said obligations had been omitted; that he inquired of Mr. Hennen the cause, whose answer was, that he reserved them for another effort in case the one about making should not prove successful. The same was made, and did not prove succeessful; that the said Hennen thereupon informed this affirmant that he should forthwith prepare another application to his honor Judge Harper for an injunction founded on the said obligations; that on Wednesday afternoon, the 21st instant, the said Hennen met this affirmant in the street, and informed him verbally that he should, on the following Saturday, make an application to his honor Judge Harper for an injunction in the above entitled cause. To which this affirmant replied that he must have written notice, with copies of all the papers he intended to use or refer to in the argument, that were not no file in the cause; that no other notice was good, and that he should object to the hearing until he received regular notice; that this affirmant appeared in court at the proper time and objected to the notice, when his honor Judge Harper said that verbal notice in the street was good, unless defective as to time; that it was a motion to be heard at chambers, and could not be heard that day. This affirmant appeared again in court on Monday, when the said Hennen informed him, that no further action would be had on the proposed application; at all events, not until further notice; that the property having been sold, there would be no use in it; and that they had adopted a new course of proceedings in lieu thereof. This affirmant further says, that, on Monday afternoon, the 2d of June, this affirmant met said Hennen at the clerk's office in the act of withdrawing from the papers filed in this cause, the aforesaid petition on which his honor Judge Harper had refused to grant an injunction, when this affirmant objected to his taking away said petition;

that he replied he had a right to take it, and did take it away; adding that he wanted to add some other matters, and that then he should present it again to Judge Harper under a former notice.

"JACOB BARKER."

"Affirmed to before me, this 3d June, 1834.

"DUNCAN N. HENNEN, *Clerk.*"

Judge Harper insisted on considering the motion: the counsel for the claim informed him that he was not in court to meet that question; that he was totally unprepared, having been employed and come there to argue a very different question: the judge adhered to his determination; the testimony or affidavit of Richard Relf, esq., who was present in court, was then offered to disprove the most material allegation in the bill of complaint, when his honor Judge Harper refused to allow any testimony to be taken, or affidavit to be read, rebuting the allegations in the bill. It was then proposed to read certain original papers on file in the cause, which the judge would not allow, except those which had been referred to, or made part of the bill of complaint, saying, that for the purpose of deciding the motion for the injunction, all the allegations in the bill must be taken to be true. It was then, among other things, contended that the most material allegation was proved to be false by the papers produced and read by the complainants.

The judge said he would take the papers and consider the case. When the argument closed, the counsel for the defendants dismissed the aforesaid rule on the marshal, and on the 4th of June his honor Judge Harper made an order in words and figures following:

"Let a writ of injunction issue in this case on the complainants entering into bond in the sum of twenty-four thousand dollars, as Mr. John Linton, as surety, conditioned according to law.

"SAMUEL H. HARPER, *Judge U. S.*

"The clerk will add the names of Wm. Dodd, W. B. Robertson, Joseph Thompson, Isaac Erwin, Eliphalet Slack, C. Clement, and A. Dupray, to the injunction bond.

"S. H. HARPER."

With the preceding order, the judge delivered to the clerk a paper stating his reasons for his opinion, which reasons were in words and figures following:

"LIFE AND FIRE INSURANCE COMPANY *vs.* "HEIRS OF N. WILSON. } "*Application for an injunction.*

"The most of the authorities referred to in the brief of plaintiffs relate to the merits of the case, and when they come before the court, may be conclusive in their favor, but on an *ex parte* application for an injunction, the merits of the bill cannot be inquired into.

"The bill on its face exhibits sufficient grounds to arrest the execution, and therefore I feel bound to grant the injunction."

Your petitioners further represent that the judge left New Orleans for Opelousas, to hold court there, immediately after granting the injunction, and that the clerk of the court proceeded to take the security ordered, when a

Mr. Thompson appeared, alleging that he was the general attorney of Mr. Linton, who had left the city some days before, and offered to sign the bond as his attorney, and also as the attorney of the other persons mentioned, producing their power to Mr. Linton, which did not contain any power of substitution. It was insisted in behalf of the claim that the power of Mr. Linton must be produced, to ascertain whether the said Thompson could bind him, and that he could not sign for the others without power from them; that the laws of Louisiana forbid an injunction, without good security for an amount greater than the claim to be enjoined, and that such laws made it the duty of the clerk to take the security: to which the said clerk replied that he could not consider those matters; that the judge had directed him to ask Mr. Thompson if he considered himself authorized to sign in behalf of the parties, and if he answered affirmatively, to allow him to do so, and not to require any proof of that fact; and the bond, thus subscribed, was accepted, and an injunction issued in words and figures following:

"*The President of the United States of America to the Marshal of the Eastern District of Louisian, or to his lawful Deputy, greeting:*

"You are hereby strictly enjoined and commanded to stay all further proceeding under or by virtue of a certain writ of execution, issued from the district court of the United States for the eastern district of Louisiana, on the 19th day of April past, at the suit of the Life and Fire Insurance Company of New York *vs.* the Heirs of Nicholas Wilson, against the property seized by you under the authority of said writ, and advertised to be sold on the 9th day of June instant. And hereof fail not, under pain of the penalty that will fall thereon.

[L. S.] "Witness, the honorable Samuel H. Harper, judge of the said court, this 4th day of June, 1834.

(Signed) "DUNCAN. N. HENNEN, *Clk*

"The above is a true and correct copy of the original now in my possession.

"L. C. BACON,
"*U. S. Deputy Marshal.*"

Your petitioners further represent that, by the laws of Louisiana, a purchaser at execution sales is authorized to retain from the amount bid, the amount of previous mortgages, and makes it the duty of the sheriff to procure from the parish judge a certificate of encumbrances, and to proclaim it at the time of sale; that the office of the parish judge was situated several miles from the premises in question, which were to be sold at 10 o'clock A. M.; that the application was made to the judge for a certificate the previous day; that he refused to give it before the morning of the sale, and that he did then furnish a false certificate, *omitting* the name of a mortgage which the law in effect required him to have set forth in his certificate, in case the mortgage had existed, the effect of which omission was to make the detection of the fraud more difficult and distant, and thus aid in accomplishing what was doubtless intended, and what was accomplished, viz., the defeat of the then collection of the money due; copy of which certificate is hereunto annexed, No. 29.

Your petitioners further represent that, in consequence of such false certificate, the marshal was unable to get the money which the laws of Loui-

siana made it his duty to do, or to resell the premises on the day of sale, and before he left the ground.

Your petitioners further represent that the parish judge left the parish on issuing the said false certificate, and did not return for about ten days; so that they were unable to procure the necessary correction until all the mischief had been done; and your petitioners beg leave to refer this honorable court to the documents herewith, Nos. 30 to 34, for proof of the true character of the said certificate from the parish judge.

Your petitioners further represent that the marshal was, by the aforesaid injunction, prevented from proceeding to collect the money from the purchaser of the premises, and from selling the same on account of the said purchaser, pursuant to the laws of Louisinan, for which purpose the same had been advertised to be sold on the 9th of June last, in consequence of the non-performance of the said purchaser.

Your petitioners further represent that the amended bill did not contain any averment of matter discovered since the presenting of the original bill, nor any matter not contained in the original bill, except, in substance, an allegation of the possession of life and fire obligations, with which the complainants contended they had a right to extinguish the debt in question, and which they alleged had been offered to the Life and Fife Insurance Company for that purpose, and again offered in court.

Your petitioners further represent that the said obligations were purchased, in New York, for a very small sum of money, more than two years after the transfer of the said claim to the present proprietors, and the insolvency of the Life and Fire Insurance Company, and after the affairs of said company had passed into the hands of receivers in chancery, and nearly two years after due notice had been given to the defendants of such transfer.

Your petitioners further represent that, on receiving notice of the aforesaid rule on the marshal, to show cause why the obligations of the Life and Fire Insurance Company, should not be received in satisfaction of the amount of the execution, it was deemed important to get an authenticated copy of the appointment of S. M. Spragins, curator of the estate of Nicholas Wilson, deceased, to whom the notice of the transfer of the claim in question had been given; for which purpose application was made to Judge Dutton; his certificate, No. 25, of the 29th May, 1829, not being legal testimony, and he furnished the original of paper, No. 34, of which copy is hereunto annexed, and from which the signature of the security was omitted; and which was so important that if the paper had been presented on the trial without discovering the omission, it is believed, that it would have been considered by Judge Harpar as proof that no appointments had been made; and as it was, if the motion had been brought on for argument, pursuant to notice, in place of the motion for the injunction, the said omission would have left the counsel for the claim without proof of that all-important fact; and in proof of the said omission, your petitioners beg leave to refer to papers also granted by Judge Dutton, on the 20th of June, 1834, and hereunto annexed, No. 36.

Your petitioners further represent that, on the 11th of June, in the absence of Judge Harper, an application was presented to the clerk of the court for an appeal, as per copy hereunto annexed, No. 37, with an offer to deposite one hundred dollars, or such other sum as should be required for expenses in case the appeal should not prevail; the said clerk replied, that a deposite of money was not required; and that it was usual to give bond with

security for five hundred dollars, which was accordingly given; but the clerk said he could not allow, nor file the appeal, without the judge's order. It was, therefore, left to be presented to his honor Judge Harper, on his return, which was done, and he refused to allow the appeal, as per the certificate of the clerk of the court, made on the appeal, as per copy hereunto annexed, No. 38.

In confirmation of the aforesaid allegations, your petitioners refer to the record of proceedings heretofore presented to this honorable court in the above entitled cause, and to authenticated copies of the opinion of Judge Harper of the 19th April last, and many other proceedings before said court, duly certified by the officers of said court, and to sundry original papers from Judge Dutton, now in possession of the parties, in interest, and ready to be produced to this honorable court; and conceiving that they are entitled to have the execution, issued on the 19th of April, enforced against the mortgaged premises, by the marshal of the United States, and to have a further execution for the balance of the aforesaid claim, either by authority of the aforesaid mandamus, or by having the aforesaid confession of judgment, of the 10th of March last, signed, or by virtue of the original order of seizure and sale, or otherwise; therefore your petitioners pray that your honorable court will, by granting a further writ of mandamus, directed to Samuel H. Harper, judge of the district court of the United States for the eastern district of Louisiana, and, if necessary, also to John Nicholson, marshal of the said court; or, otherwise, direct such a course of proceeding as will secure the due execution of the mandamus heretofore granted by this honorable court, and afford your petitioners such other relief as they may be entitled to in the premises.

[L. S.] WM. R. THURSTON,
President of the Mercantile Insurance Company of New York.

W. REDIN, *Att'y for Pl'ts.*

SOUTHERN DISTRICT OF NEW YORK, *ss.*

Jacob Barker, being duly affirmed, says that he is Assistant President of the Mercantile Insurance Company of New York; that he in their behalf attended the aforesaid proceedings before the United States court for the eastern district of Louisiana, on and after the 7th of March last, and that the same are faithfully and truly detailed in the aforesaid petition; also that the other matters stated in the petition occurred or took place, as therein stated, according to the best of his knowledge, recollection, and belief.

JACOB BARKER.

Affirmed to, this 2d day of August, A. D. 1834, before me,
GEO. W. MORTON,
U. S. Commissioner.

No. 1.

STATE OF LOUISIANA, *City of New Orleans.*

Be it known, that this day, before me, Carlile Pollock, notary public in and for the city of New Orleans, duly commissioned and sworn, personally came and appeared Nicholas Wilson, of the parish of Iberville, in this State, who declared and acknowledged that he is justly and truly indebted unto the Life and Fire Insurance Company, in the city of New York, in the sum of twenty-six thousand and eighteen dollars and twen-

ty-five cents, lawful money of these United States, for the payment of which he has granted the following described promissory notes, viz.: Five several notes, each for the sum of four thousand dollars, dated the 18th of November, eighteen hundred and twenty-three, subscribed by him, the said Nicholas Wilson, to the order of, and endorsed by, Joseph Erwin, of the parish of Iberville aforesaid; and afterwards endorsed by the house of trade of Messieurs William Kenner and Company, of this city, merchants, payable at the office of the Life and Fire Insurance Company, in the city of New York, at the following periods, viz.:

The first on the eighteenth day of January, eighteen hundred and twenty-five, and the four others on the corresponding days of each succeeding year, so that the last will become due on the eighteenth day of January, which will be in the year eighteen hundred and twenty-nine, making, together, the sum of twenty thousand dollars - - - - $20,000 00

And, for the remaining sum of six thousand and eighteen dollars and seventy-five cents, he has granted his nine several promissory notes, each dated the eighteenth of November, eighteen hundred and twenty-three, payable at the said office of the Life and Fire Insurance Company, in the city of New York, to the order of, and endorsed by, the said Joseph Erwin, and afterwards by the said house of William Kenner and Co., in manner following, viz.:

1. One note for the sum of twelve hundred dollars, payable in six months - - - - - - $1,200 00
2. One note for the sum of nine hundred and sixty dollars, payable in eighteen months - - - - - 960 00
3. One note for the sum of seven hundred and twenty dollars, payable in thirty months - - - - - 720 00
4. One note for the sum of four hundred and eighty dollars, payable in forty-two months - - - - - 480 00
5. One note for the sum of two hundred and forty dollars, payable in fifty-four months - - - - - 240 00
6. One note for the sum of nine hundred and sixty-seven dollars and fifty cents, payable in twelve months - - 967 50
7. One note for the sum of seven hundred and twenty-five dollars, payable in twenty-four months - - - 725 00
8. One note for the sum of four hundred and eighty-three dollars and seventy-five cents, payable in thirty-six months - 483 75
9. And one note for the sum of two hundred and forty-two dollars and fifty cents, payable in forty-eight months - - 242 50

$26,018 75

All which notes, being fourteen in number, after having been countersigned ne variatur by me, the said notary, for the purpose of identifying them with this act, have been, in the presence of the said notary and the undersigned witnesses, delivered unto Richard Relf, of this city, esquire, agent of the said Insurance Company, the receipt whereof he hereby acknowledges: and for the purpose of securing the said notes when they shall respectively fall due; and, also, to comply with the conditions contained in a certain agreement, made and executed in the city of New York on the 17th November, 1823, which, at the request of the said parties to these presents,

has been hereunto annexed, to make part of this act, for the purpose of explaining the obligations of the parties thereto, for as much as concerns the life insurance therein mentioned; he, the said Nicholas Wilson, does hereby, for himself and his heirs, specially mortgage and hypothecate unto Henry Eckford, President of the said Insurance Company, and his successor and successors in office, all and singular the property hereinafter described, viz.:

All that plantation or tract of land, designated and known by the name of the Evergreen, situate, laying, and being in the parish of Iberville, in this State, on the right bank of the river Mississippi, about one league below Bayou Plaquemine, measuring twelve arpens in front on the river, by eighty arpens in depth, be the same more or less; bounded on the one side by the land belonging unto Joseph Erwin, and on the other side by land belonging unto Mistress Pauline Latile, wife of Antoine Leonard, together with all the buildings and improvements on said land, and appertenances thereunto belonging, being the same plantation or tract of land and tenements, which he the said Nicholas Wilson acquired in the manner following, viz.: the undivided half by purchase from Joseph Erwin, by act passed before the judge of the parish of Iberville, on the 17th April, 1816, and the undivided half by purchase from Christopher Adams, by act passed before the same judge, on the 29th of January, 1817; also, thirty-five slaves, now on, and belonging to the said plantation, viz.: Ben, 30 years; Rixon, 30 years; Big Charles, 28 years; Little Charles, 28 years; John Grigg, 30 years; Dick, 30 years; Isaac 40 years; Nathan, 30 years; Bill, 25 years; Yellow Joe, 30 years; Black Joe, 45 years; Jenny, 30 years; Fanny, 25 years; Hannah, 30 years; Sally, 27 years; Sal, 27 years; Rachel, 22 years; Felicite, 22 years; with her child Nancy, 4 years; Susan 27 years; Jack Hunter, 23 years; John Beaver, 15 years; Jerry, 22 years; Yellow Isaac, 18 years; Kizzy, 25 years; Harriet, 20 years; Hester, 22 years; Washington, 7 years; John Carroll, 7 years; Mary, 7 years; Yellow Harriet, 6 years; Dave, 3 years; Peter 7 years; and Hester, 2 years; warranted free from the vices and maladies prescribed by law: (all which lands and slaves being free from encumbrance as appears by the certificate of the conservator of mortgages in this city, dated this day,) are so to remain mortgaged, until the full and entire payment of all and singular, the said aforedescribed promissory notes, and of all and every part thereof, according to their tenor: And the said Nicholas Wilson further declared that he does, moreover, for the purpose of securing the true and punctual payment of the said notes at the times when they shall respectively become due and payable, by these presents, for himself and his heirs, grant, bargain, sell, assign, transfer and set over unto the President of the said Insurance Company, and his successor and successors in office, all the crops which shall be made, from year to year, on the said plantation, from and after the date of these presents, and until the said obligations and each of them, and all and every part thereof, shall have been fully paid and discharged, and hereby binds himself, and his heirs, annually, to ship, or cause to be shipped, the said crops, from New Orleans to New York, in approved vessels, and consigned to the said president, or his successor or successors in office, to be sold on account and risk of him, the said Nicholas Wilson and at his cost, for which the said Company shall be allowed to charge the premium for insurance, and the usual commission for selling the same.

And Richard Relf, agent of the said Insurance Company, being present, declared that he does in his said quality for and in their name and behalf, accept the foregoing mortgage and assignment.

Done and passed at New Orleans in the presence of George Pollock and William Boswell, witnesses, who have signed their names with the parties, and me, the notary, this fourteenth day of January, eighteen hundred and twenty-four.

(Signed) NS. WILSON,
RICHARD RELF,
GEORGE POLLOCK,
WILLIAM BOSWELL.
CARLILE POLLOCK, *Not. Pub.*

I certify the foregoing to be a true copy of an original act re-
[L. S.] corded in my office; as witness my signature and seal of office this seventeenth day of January, eighteen hundred and twenty-four.
CARLILE POLLOCK, *Not. Pub.*

Copy of the Document mentioned in the foregoing Act to be annexed thereunto, and making part thereof, viz.:

NEW YORK, 17 *November*, 1823.

Agreement between the Life and Fire Insurance Company, of the first part, and Richard Clague, of the party of the second part, for and in consideration of the agreement hereinafter contained on the part of the said party of the second part; the party of the first part agrees to effect insurance annually, for five years to come, on the lives of sundry approved persons, conformably to the rules of the said party, of the first part, to the amount of 45,000 dollars for the first year, to the amount of 36,000 for the second year, to the amount of 27,000 dollars for the third year, to the amount of 18,000 dollars for the fourth year, and to the amount of 9,000 dollars for the fifth year, at the rate of six per cent. per annum; the premium payable annually and in advance, and on the payment of the premium for the first year, the said party of the first part agrees to send their bonds to the amount of 45,000 dollars, payable in New York in five equal annual payments, with interest at six per cent. per annum; the interest payable quarterly, to their agent at New Orleans; 25,000 dollars of which to be delivered to Christopher Adams in exchange for his notes for the like amounts, with the like interest, payable also in New York; and 20,000 dollars to be delivered to Nicholas Wilson in exchange for his notes for like amounts, with like interest, payable also in New York: the whole of the said notes to bear even dates with the bonds to be issued by the Life and Fire Insurance Company, and each class or instalment to be made payable three months sooner than the said bonds, and to be endorsed by Joseph Erwin and by William Kenner & Co. Those for the 25,000 dollars to be secured by a mortgage on the plantation on which the said Christopher Adams now lives, known by the name of the Belle plantation, situate in the parish of Iberville, on the right bank of the river Mississippi, having thirteen arpens in front on the river, bounded on the upper side by the property now or late of Antonio Blanchard, having a depth of eighty arpens, together with all the buildings and improvements thereon, and seventy-one slaves. The notes for 20,000 dollars to be secured by a mortgage on the plantation on which the said Nicholas Wilson now lives, situate in the parish of Iberville, on the right bank of the river Mississippi, having about twelve arpens in front, with a depth of eighty arpens, bounded on the upper part by the

plantation of Joseph Erwin, and on the lower part by lands belonging to W. Leonard, with all the buildings and improvements thereon, and thirty-five slaves. And in the event of any thing happening to prevent the exchange of the said bonds for the said notes, or any part thereof, the said policies, to the amount not exchanged, shall be cancelled, and the said premium, to be received in advance, shall be returned to the said party of the second part, in proportion to the unexpired period, when notice of such omission to make the exchange shall be received; and in the event of the parties to the said notes or any of them wishing at any time, within the said five years, to re-exhange the said bonds for the said notes, or any part thereof, they shall have a right to do so, when no further insurance shall be effected on the amount thus re-exchanged; but no return of premium to be made thereon, in consequence of the unexpired part of the year at the time of such re-exchange; and the said party of the second part, for and in consideration of the agreements herein before contained, hereby engages and promises to furnish approved names for the aforesaid life insurances, and that he will pay the premium thereon annually, in advance, to the amount herein before mentioned; and that the said Christopher Adams and Nicholas Wilson shall present to the agent of the party of the first part, at New Orleans, within two months from the date hereof, their notes as aforesaid, endorsed by the said Joseph Erwin and Wm. Kenner & Co., and offer to exchange them for the bonds aforesaid; and that the payments of the said notes shall be secured by mortgages as aforesaid; and that the titles to the said premises shall be good and free from all other encumbrances; and that the said mortgages shall contain an assigment of the crops of the said premises, until the whole of the said notes are paid off; and that the same shall be annually shipped from New Orleans for New York, in approved vessel or vessels, consigned to Henry Eckford, esquire, for sale on account and risk of the mortgagees, and at their cost; that the said Henry Eckford shall have the right to charge the premium for insuring the same from New Orleans to New York, as well as the accustomed commission for selling the same; and in the event of the crops producing, in any one year, more than the amount payable in that year, all previous payments being made, such excess shall be paid to the order of such mortgagers.

(Signed) H. ECKFORD, *Pres't.*
RICH'D CLAGUE.

Witness:
(Signed) M. L. DAVIS.

Approved: (Signed) NS. WILSON,
CHRIS'R ADAMS.

NEW ORLEANS, 14 *January*, 1824.

Of the above-mentioned bonds four thousand dollars are to be retained by the company, and by them delivered over to Jacob Barker, or his order, on receiving advice of the execution of the agreements at New Orleans; he, at the same time, the company the premium of insurance agreed on for one year, and the residue only, say forty-one thousand dollars, to be be transmitted to New Orleans.

(Signed) H. ECKFORD, *Pres't.*
RICH'D CLAGUE.

Witness: M. L. DAVIS.

I certifiy the foregoing to be a true copy of the original docu-
[L. S.] ment deposited in my office on the fourteenth of this current month; as witness my signature and seal of office, this seventeenth day of January, eighteen hundred and twenty-four.

CARLILE POLLOCK, *Not. Pub.*

I, John Dutton, parish judge in and for the parish of Iberville, do hereby certify and attest to all whom it may concern, that the instrument of writing and mortgage contained in the foregoing six pages, in the margin of which my signature is written, are inscribed at length in my record book of mortgages, designated K, page sixty-five, number eighty-four, this twenty-fourth day of January, in the year of our Lord one thousand eight hundred and twenty-four.

[L. S.] In witness whereof, I have here written my name and set my public seal.

JOHN DUTTON,
Parish Judge of Iberville parish.

No. 2.

STATE OF LOUISIANA, *Parish of Iberville.*

At the parish of Iberville, on the twentieth day of November, in the year of our Lord one thousand eight hundred and twenty-five, at twelve o'clock, noon.

Pursuant to a decee of the court of probates, in and for the parish of Iberville, bearing date the fifth day of the present month, I, John Dutton, parish judge, performing the duties of notary public in and for the said parish, was holden a family meeting, consisting of the relations and friends of Catherine Wilson, a minor of the age of puberty, of Lavinia Wilson, Joseph Erwin Wilson, Alexander Wilson, John Nicholas Wilson, and Caroline Eliza Wilson, minors, under the age of puberty, all which minors are the heirs and descendants of Nicholas Wilson, late of said parish, deceased.

By the return of the sheriff of the parish of Iberville, it appears that, on the seventh day of the present month, the following persons were cited to attend to said family meeting on the day and at the hour above-mentioned, viz.: 1st. Joseph Erwin, maternal grandfather to said minors; 2d. John Erwin, maternal uncle to said minors; 3d. Abraham Wright, cousin germain to the mother of said minors; 4th. William Dodd, husband of Elizabeth Pritchard, cousin germain to the mother of said minors: these being all the relations or connexions of the said minors residing in the parish; and 5th, of Jean Baptiste Rits, a friend and neighbor of said minors.

The citation on which said return is made, and which is hereunto annexed, was issued from the court of probates, and is dated the fifth day of the present month.

The appointment of the members of said family meeting, by the judge, as appears by the copy of the order of that appointment hereto annexed.

The persons above named as composing the said family meeting, being duly assembled as aforesaid, having taken the oath as prescribed by the article 309 of the Civil Code, went into deliberation on the subject for which they were convened, viz.: whether it be for the interest of the above named minors, that the property described, inventoried, and estimated in the inventory of the community of Nicholas Wilson, deceased, and Eliza his widow, and which the said Eliza, widow of Nicholas Wilson, has, in

common with said minors, be set over and adjudicated to the said Eliza, widow of Nicholas Wilson, at its estimated value as set forth in the inventory thereof, made the second and fourth day of the present month.

And the said members, having duly deliberated, after having particularly examined the inventory of said property and the estimation thereof, as set forth in said inventory, decided and declared that it is for the interests of the aforesaid minors, that said property be set over and adjudicated, to said Eliza, widow of Nicholas Wilson, at its estimated value as aforesaid.

Robert Thompson, curator ad lites of the said minor, Catharine Wilson, and under tutor to the said minors, Lavinia Wilson, Joseph Erwin Wilson, Alexander Wilson, John Nicholas Wilson, and Caroline Eliza Wilson, being here present, consents to said adjudication.

Of all which I have made this proces verbal, the day and year in the beginning, written in presence of Nicholas L. Curlati and Samuel M. Spragins, witnesses hereto required, who have signed with said appearers, and me the said judge.

(Signed) JOSEPH ERWIN,
JOHN ERWIN,
WILLIAM DODD,
AB. WRIGHT,
JEAN BTE. RITS,
ROBERT THOMPSON,
S. M. SPRAGINS,
NS. L. CURLATI.

JOHN DUTTON,
Parish Judge, in and for the parish of Iberville.

Extract from the inventory of the property of the community of Nicholas Wilson, deceased, and Eliza, his widow, which was inventoried, and estimated on the second and fourth days of November, in the year eighteen hundred and twenty-five; which property the said widow has petitioned to be set over and adjudicated to her at its appraised value and which was acted and deliberated on at a family meeting composed of the minor heirs of said Nicholas Wilson, deceased, holden before John Dutton, parish judge and notary public, in and for the parish of Iberville, the twelfth day of November, in the year eighteen hundred and twenty-five.

Article 1st. A family of slaves composed of William, aged 50 years; his wife Fillette, aged 35 years; her children, Jane, 9 years; Mary, 6 years; Nicholas, 3 years; and John, one year; valued at seventeen hundred and fifty dollars - - - - - - - - $1,750

2d. Manuel, aged fifty years; Molly, 42; Prissey, 8; Marcelina, 1 year; estimated at eleven hundred and fifty dollars - 1,150

3d. James, 42; Lydia, 35; Ben, 8; estimated at eleven hundred dollars - - - - - - - - 1,100

4th. Acme, aged 35 years; her children, Martin, 3 years; Anthony, 6; Charlotte, 1 year; estimated at nine hundred and fifty dollars - - - - - - - - 950

5th. Charles, 32 years; Minty, 28; her children, Harriet 2 years; Charles, 1 year; estimated at thirteen hundred dollars - 1,300

6th. John Jackson, 22 years; Theresa, 20; an infant; estimated at eleven hundred and fifty dollars - - - - 1,150

$7,400

Over	$7,400
7th. Jim Johnson, 19 years; Peggy, 20 years; George 4 years; Nelly, one year; Fanny, three months; estimated at fourteen hundred and fifty dollars - - - - -	1,450
8th. Joe, aged 19 years, estimated at four hundred dollars -	400
9th. Soloman, 17, estimated at five hundred dollars - -	500
10th. Bazil, 14 years of age, estimated at four hundred dollars	400
11th. Nace, 13 years, estimated at four hundred dollars -	400
12th. Oscar, aged 12 years, at three hundred dollars - -	300
13th. Jim Steenrod, 13, estimated at four hundred dollars -	400
14th. Len, 10 years, estimated at three hundred dollars -	300
15th. Raphe, 14 years, four hundred and fifty dollars -	450
16th. Anthony, 16, four hundred and fifty dollars - -	450
17th. William O'Neal, 14 years, four hundred and fifty dollars	450
18th. Guy, 14, four hundred and fifty dollars - - -	450
19th. Ben, 7 years, an orphan, three hundred dollars - -	300
20th. Eli, 19 years, five hundred dollars - - -	500
21st. William, 11 years, three hundred and fifty dollars -	350
22d. Charity, 30 years, four hundred dollars - - -	400
23d. Julianne, 16 years, four hundred dollars - - -	400
24th. Louisa, 14, four hundred dollars - . -	400
25th. Nelly, 17 years, four hundred dollars - - -	400
26th. Maria, 18 years, four hundred and fifty dollars - -	450
27th. Sarah Anne, 12 years, three hundred and fifty dollars -	350
28th. Kitty, 12 years, three hundred and seventy-five dollars -	375
29th. Eliza, 12 years, three hundred dollars - - -	300
30th. Sophy, 11 years, three hundred dollars - - -	300
31st. Eliza, 12 years, three hundred dollars - - -	300
32d. Minty, 11 years, three hundred dollars - - -	300
	$18,475

At five o'clock in the evening closed the present vacation, and adjourned further proceedings herein until Friday, the fourth day of the present month; and here signed, with said witnesses, and the said Eliza Wilson, and me the said judge, and the said appraisers.

(Signed) ELIZA WILSON,
JAMES JOHNS,
THOMAS HEBERT,
ROBERT THOMPSON,
NICHOLAS TOFFIER,
JACOB ANSELME.
JOHN DUTTON *Parish Judge of Iberville.*

On the fourth day of November, in the year of our Lord one thousand eight hundred and twenty-five, the undersigned judge, in and for the parish of Iberville, proceeded to the continuation of the inventory, of the property belonging to the community, which existed between Nicholas Wilson, esq., deceased, and his widow, Eliza Erwin. The same being done in presence of Jacob Anselme and Richard Beames, witnesses hereto required, domiciliated in said parish. The property hereinafter described, being duly appraised by James Johns and Thomas Hebert, for that purpose duly appointed and sworn.

The said inventory was continued as follows:
(Amount brought from page.)

Art. 33d. A negro man named Nathan, aged 28 years, estimated at five hundred dollars - - - - - $500
34th. Sally, a negro woman, aged 30 years, estimated at four hundred and fifty dollars - - - - - 450
35th. John Mitchell, 20, five hundred and fifty dollars - 550
36th. Harriet, aged 19 years, and her child Michel, 1 year and six months, at six hundred and fifty dollars - - - 650
37th. Ben, a negro man, aged 24 years; Rachael, aged 21 years; and Hester, aged two years; at twelve hundred dollars - 1,200
38th. Big Charles, a negro man, aged 26 years, estimated at five hundred and fifty dollars - - - - - 550
39th. Dick, aged twenty-six years, estimated at five hundred and fifty dollars - - - - - - 550
40th. Little Charles, aged twenty six years, estimated at five hundred dollars - - - - - - 500
41st. Hannah, aged thirty years, estimated at four hundred dollars - - - - - - - - 400
42d. Joe Coon, aged 40 years, at four hundred dollars - 400
43d. Phil, aged 25 years, at four hundred dollars - - 400
44th. Jack Hunter, 30 years, at five hundred and fifty dollars - 550
45th. Sydy, aged 21 years, at four hundred and fifty dollars - 450
46th. Rixon, aged 30 years, at five hundred and fifty dollars - 550
47th. Joe Bulner, 28 years; Kiz, aged 26 years; and her child Adam, aged 4 months; estimated together at seven hundred dollars - - - - - - - - 700
48th. Big Isaac, aged 40 years, at four hundred and fifty dollars - - - - - - - - 450
49th. Jenny, aged forty years, at three hundred fifty dollars - 350
50th. Susan, aged 30 years, and her child Dave, aged four years, estimated at six hundred dollars - - - - 600
51st. Little Isaac, aged eighteen years, estimated at four hundred and fifty dollars - - - - - - 450
52d. John Beaver, aged 18 years, at four hundred and fifty dollars - - - - - - - - 450
53d. John Grigg, aged thirty years, at five hundred dollars - 500
54th. Sally, aged twenty-five years, at four hundred and fifty dollars - - - - - - - 450
55th. Hester, aged thirty-five years, her children, Mary, 9 years old, and Harriet, aged six years, Elizabeth one month, estimated at eleven hundred and fifty dollars - - - 1,150
56th. Fanny, aged 25 years, at four hundred and fifty dollars - 450
57th. John Ferrol, 10 years, three hundred dollars - - 300
58th. A plantation situated in the parish of Iberville, on the right bank of the Mississippi, bounded above by lands of Joseph Erwin, and below by lands of Henry Crabb, containing twelve arpens, or thereabouts, in front, by eighty arpens in depth, together with all the buildings and improvements thereto belonging, with the following articles: Nine plough horses, one mule, one pair of oxen, 6 milch cows, 8 two year old, one steer, 25 hogs, 20 sheep, one ox cart, one horse cart,

one small one horse wagon, one pair cart wheels, two iron harrows, 11 ploughs, 2 wood harrows, 5 sets double trees, 4 single trees, 7 pair trace chains, 7 back bands, 4 blind bridles, 2 ox chains, 7 pairs hames, 2 bryer scythes, an old gin cylinder and box, 52 rugs, 52 grates, one grind stone, 1 steelyard, 15 new axes, 18 weeding hoes, 4 grubbing hoes, one whip saw, one × cut saw, 2 iron wedges, 2 froes, one chest of carpenter's tools, one small box containing a small vice and a small anvil, one lot of old iron, 3 harrow hoes, one large timber chain, one garden shears, 1 sheep shears, eight spades, one shot gun, one post howel; altogether appraised at twenty-three thousand twenty-five dollars and twelve and a half cents - 23,025 12½

$36,575 12½

Making in all the estimation of the said plantation and appertenances thirty-six thousand five hundred and seventy-five dollars and twelve and a half cents.

Plantation and appertenances, together with the old stock of negroes, which are altogether mortgaged to the Life and Fire Insurance Company of New York, originally for the sum of twenty-six thousand six hundred and eighteen dollars and seventy-five cents - - - $26,018 75

At two o'clock in the afternoon closed this vacation, and adjourned the continuation of this inventory, until Saturday, the nineteenth day of the present month; of all which, I have made this process verbal, and cause the same to be signed by Mrs. Eliza Wilson, widow of said deceased, Nicholas Wilson, and the said appraisers, who have signed with the said witnesses, and me the aforesaid judge.

(Signed) ELIZA WILSON,
JAMES JOHNS,
THOMAS HEBERT,
ROB'T THOMPSON,
RICHARD BEAMES,
JACOB ANSELME
JOHN DUTTON,
Parish Judge of the parish of Iberville.

I, John Dutton, parish judge in and for the parish of Iberville, do hereby certify the foregoing to be a true copy of the record inscribed in my record book of notarial acts and alienations of real property, designated K, No. 534.

Given and attested under my signature and public seal, this seventeenth day of March, in the year eighteen hundred and thirty four.

JOHN DUTTON, *P. Judge.*

No. 3.

STATE OF LOUISIANA, *Parish of Iberville.*

In the succession of Nicholas Wilson, deceased.

In pursuance to the order of John Dutton, parish judge in and for the parish of Iberville, and by adjournment, before me, John A. Hease, a justice of the peace in and for the parish of Iberville, aforesaid, came Robert Thompson, curator ad lites to the minor Catharine Wilson, and undertutor to the minors Lavinia Wilson, Joseph Erwin Wilson, Alexander Wilson, John Nicholas Wilson, and Caroline Eliza Wilson, children of Nicholas Wilson, deceased, and Eliza Erwin, widow of said Nicholas Wilson,

deceased, curatrix ad bona to said Catharine Wilson, and natural tutrix to the said Lavinia Wilson, Joseph Erwin Wilson, Alexander Wilson, John Nicholas Wilson, and Caroline Eliza Wilson; and also John Erwin, maternal uncle to said minors, Joseph Erwin, maternal grandfather to said minors, William B. Robertson, maternal uncle by alliance to said minors, Abraham Wright and William Dodd, cousins to said minors, and Jean Baptiste Rits, a friend to said minors; duly convoked to assemble in family meeting according to law, and in pursuance of the order of the parish judge, as aforesaid. The said family meeting being duly convened, at my office, in the parish aforesaid, then and there the said tutrix and curatrix of said minor children, represented to this family meeting that the Life and Fire Insurance Company, of the city of New York, had a mortgage on the plantation and certain slaves of said Nicholas Wilson, deceased, (which plantation and slaves belonged to the community of acquests and gains of said Nicholas, deceased, and the said tutrix and curatrix,) she, the said Eliza Wilson, not hereby meaning or intending to impair or prejudice her dotal rights to said property, in any manner whatsoever, as appears by an act of mortgage made and entered into by said Nicholas Wilson, during his life time, passed before Carlile Pollock, a notary public in the city of New Orleans, on the 14th day of January, in the year of our Lord one thousand eight hundred and twenty-four, originally for the sum of twenty-six thousand and eighteen dollars and seventy-five cents, on which a part has been paid, and an undivided and unliquidated balance remains unpaid; and the said curatrix and tutrix did further declare, that she has been advised that Josiah Barker, agent of said company, in the name and by the authority of said company, and taking into view the mutual interest of all parties concerned, has proposed to grant a delay of execution of the aforesaid mortgage, in case the said tutrix should confess a judgment, with a stay of execution thereof, until a certain day, by the parties concerned to be agreed on, for the balance of said mortgage now remaining due and unpaid, with interest by the parties concerned to be affixed; and with a further condition, that, if at the expiration of said delay, the capital now remaining unpaid, and interest thereon as shall be fixed by and between the parties concerned, shall not be punctually paid, the property mortgaged, as aforesaid, shall be seized and sold for what it will bring in cash, without appraisement, after legal advertisement and publication; she, the said Eliza Wilson, as curatrix and tutrix as aforesaid, exhibits and lays before this family meeting the said proposals, and submits to the deliberation and decision of said family meeting, whether she ought to be authorized to accept the said proposals of the Life and Fire Insurance Company as aforesaid; and that, the said family meeting, the members thereof having taken the oath in such case by law prescribed, went into deliberation on the matters submitted to this meeting as aforesaid, and it was by said meeting decided, that should the said tutrix and curatrix, curator ad lites and under-tutor, find it to the interest of said minors, that the terms and proposals of said company be accepted; that the the said curatrix and tutrix, with the advice and consent of said curator ad lites and under-tutor, be authorized to make and pass all acts, and confess all judgments; and further, that the said family meeting finds the said proposal to be to the interest of said minors, and that the said tutrix and curatrix accept the same; and further, the said meeting doth hereby authorize the said curatrix and tutrix to enter into such other arrangments, concerning the premises, as she, and the said curator ad lites and under-tutor, may judge most advantageous to the interest of said minors.

In testimony whereof the said justice of the peace has proceeded to mak- this process verbal of deliberation of the meeting of the family of the said minors, heirs of Nicholas Wilson, deceased, and read the same to the persons who composed the said family meeting, as above set forth, by order of the parish judge aforesaid, as well as to the curatrix and tutrix aforesaid, and to the said curator ad lites and under-tutor, who approves the same; all which was done and passed at my office as aforesaid, in the parish of Iberville, the ninth day of May, in the year of our Lord one thousand eight hundred and twenty-six, in presence of Nicholas L. Curlati and Julain Connau, witnesses, residing in said parish, who have here signed with the appearers aforesaid, and me the said justice of the peace before whom this proceeding was had.

(Signed) ELIZA WILSON,
JOSEPH ERWIN,
WM. B. ROBERTSON,
JEAN BTE. RITS,
JOHN ERWIN,
A. WRIGHT,
WM. DODD,
ROBT. THOMPSON,
JULIAN CONNAU,
N. L. CURLATI.

J. A. HEASE,
Justice of the Peace for the Parish of Iberville.

I certify the foregoing to be a true copy of the original process verbal remaining in my office. Given under my hand, this 10th day of May, 1826.

J. A. HEASE,
Justice of the Peace for the Parish of Iberville.

I certify that the foregoing is the hand-writing and signature of John A. Hease, a justice of the peace in the parish of Iberville, duly appointed and sworn. In testimony whereof I have hereunto set my hand and affixed my public seal, this tenth day of May, in the year eighteen hundred and twenty-six.

[L. S.] (Signed) JOHN DUTTON,
Parish Judge of the Parish of Iberville.

I certify the foregoing to be a true copy of a paper attached to an act in my current register of the date of May 16th, 1826. In faith whereof I grant these presents, under my signature and the impress of my seal of office, this sixth day of January, 1829.

G. R. STRINGER, *Not. Pub.*

No. 4.

STATE OF LOUISIANA, *City of New Orleans.*

Be it known and remembered that, on the sixteenth day of May, in the year of our Lord one thousand eight hundred and twenty-six, before me, Greenbury Ridgley Stringer, notary public in and for the city of New Orleans, duly commissioned, personally came and appeared Madam Eliza Wilson, widow of the late Nicholas Wilson, of the parish of Iberville, in this State, deceased, curatrix ad bona to Catharine Wilson, and natural tutrix of Lavinia Wilson, Joseph Erwin Wilson, Alexander Wilson, John Nicholas Wilson, and Caroline Eliza Wilson, minor children and heirs of the said Nicholas Wilson, deceased, under the age of puberty; and Robert

Thompson, curator ad lites to the said minor, Catharine Wilson, and under tutor to the said minors, Lavinia Wilson, Joseph Erwin Wilson, Alexander Wilson, John Nicholas Wilson, and Caroline Eliza Wilson, party hereunto of the one part, and Josiah Barker, esq., acting as the agent and attorney of the Life and Fire Insurance Company of New York, party hereunto of the other part.

The said appearers declared that, whereas the said Life and Fire Insurance Company have commenced their suit in the court of the United States for the eastern district of the State of Louisiana, in order to obtain a mandate for the seizure and sale of certain property described in a certain act of mortgage passed before Carlile Pollock, esq., notary public of this city, on the 14th of January, 1824, a copy of which is hereunto annexed, for reference, and *and* to make part of this transaction.

Now, therefore, the parties aforesaid being anxious to close the said suit by an amicable arrangement, do enter, agree to, and stipulate the following as the transaction and compromise between them in the suit aforesaid, that is to say, the said Madam Eliza Wilson, in her own right, and as curatrix ad bona and natural tutrix aforesaid, and the said Robert Thompson, curator ad lites, and under tutor as aforesaid, on behalf of the said minor children, they being especially authorized by a family meeting convoked by the parish judge, in and for the parish of Iberville, the proceeding and deliberations had thereat having been approved and homologated by him, to enter into this transaction on behalf of the said minor children, a copy of the process verbal of the said family meeting being also hereunto annexed for reference, and to make part hereof, have agreed to confess judgment to the said Life and Fire Insurance Company, and, accordingly, do hereby confess judgment in the sums following, to wit: the sum of twelve hundred dollars, due on the eighteenth day of May, eighteen hundred and twenty-four; the sum of nine hundred and sixty-seven dollars and fifty cents, due on the eighteenth day of November, eighteen hundred and twenty-four; the sum of four thousand dollars, due on the eighteenth day of January, eighteen hundred and twenty-five; the sum of nine hundred and sixty dollars, due on the eighteenth day of May, eighteen hundred and twenty-five; the sum of seven hundred and twenty-five dollars, due on the eighteenth day of May, eighteen hundred and twenty-five; and the sum of four thousand dollars, due on the eighteenth day of January, eighteen hundred and twenty-six, being the amount of instalments of the notes in the mortgage declared on in said writ: and a copy of which is hereunto annexed as aforesaid, which have already arrived at maturity, and become payable, together with the interest to be calculated thereon, from the time they have respectively fallen due, and become dayable, at the rate of seven per cent. per annum, according to the laws of the State of New York, where the said notes were made payable, and become due; and the said Eliza Erwin and Robert Thompson, in their aforesaid qualities, do further covenant, stipulate, and agree, that so soon as any and every of the residue of the notes mentioned and described in said mortgage, shall respectively fall due, they will confess judgment thereon, for the amount of each note, together with seven per cent. interest, from the time each and every of the said notes shall have arrived at maturity; and in default of such confession of judgment, so to be made by them, they, the said Eliza Erwin and Robert Thompson, acting as aforesaid, do, by these presents, constitute and appoint Henry Eckford, esq., president of the said Life and Fire Insurance Company, or his successor in office for the time being, their attorney in fact and irrevocable for them, and in their

names to appear in said court, and cause judgment to be entered up against them for each and every of said notes, with interest as aforesaid, whenever the same shall have arrived at maturity as aforesaid, hereby given unto the said Henry Eckford, president as aforesaid, or to his successor in office for the time being, atttorney as aforeasaid, full power of substitution in the premises, and one or more attorneys under him to appoint and constitute, and the same to revoke at pleasure, the said notes, described in the said mortgage which have not now arrived at maturity, being as follows, to wit: one note for the sum of seven hundred and twenty dollars, due the eighteenth day of May, eighteen hundred and twenty-six; one note for the sum of four hundred and eighty-three dollars and seventy-five cents, due on the eighteenth day of November, eighteen hundred and twenty-six; one note for the sum of four thousand dollars, due on the eighteenth day of January, eighteen hundred and twenty-seven; one note for the sum of four hundred and eighty dollars, due on the eighteenth day of May, eighteen hundred and twenty-seven; one note for the sum of two hundred and forty-two dollars and fifty cents, due on the eighteenth day of November, eighteen hundred and twenty-seven; one note for the sum of four thousand dollars, due on the eighteenth day of January, eighteen hundred and twenty-eight; one note for the sum of two hundred and forty dollars, due on the eighteenth day of May, eighteen hundred and twenty-eight; and one note for the sum of four thousand dollars, due on the eighteenth day of January, eighteen hundred and twenty-nine; with the notes above recited which have already arrived at maturity, made the aggregate amount of twenty-six thousand and eighteen dollars and seventy-five cents principal, exclusive of the interest thereon, to be calculated as aforesaid. And the said Josiah Barker, for and in behalf of the said Life and Fire Insurance Company, and as their agent and attorney aforesaid, does hereby agree, in consideration of such confession of judgment, and preserving all their liens, mortgages, and preferences, in and over the property mortgaged, to stay the execution and sale of the mortgaged premises, until the period on which the last note above-mentioned shall have arrived at maturity, which will be on the eighteenth day of January, in the year of our Lord one thousand eight hundred and twenty-nine, as before stated, and as expressed in said mortgage.

And the said Life and Fire Insurance Company further agrees to file all the notes mentioned in said act of mortgage, with the records of the said suit, before the stay of execution aforesaid shall expire and terminate.

And the said Eliza Ewrin and Robert Thompson, in their aforesaid qualities, further agree that, if the said principal sum of twenty-six thousand and eighteen dollars and seventy-five cents, together with the interest accruing thereon, to be calculated as aforesaid, shall not be well and truly paid unto the said Life and Fire Insurance Company at the time that the last note abovementioned shall arrive at maturity, then the said Life and Fire Insurance Company, may obtain writ of fieri facias forthwith, and proceed with the sale of the mortgaged premises according to law, to satisfy the aforesaid debt, with the interest and costs accruing thereon. And it is further stipulated, agreed, and provided, by and between the parties to these presents, that nothing herein before expressed and contained, shall be so construed as to operate any novation of the debts secured by said mortgage, but that the same shall be and remain in full force, bearing, and effect, to all interests and purposes as if this transaction and compromise had not been made.

And the said Josiah Barker, agent aforesaid, having exhibited and deli-

vered to me, notary, a statement of the said debt, with interest calculated thereon, as aforesaid, which statement is signed by the parties, and annexed hereunto.

Now they, said parties, have further agreed to fix the aggregate amount which will be due, and owing to the said Life and Fire Insurance Company, on the eighteenth day of January, which will be in the year one thousand eight hundred and twenty-nine, both principal and interest, at the sum of thirty thousand one hundred and ninety-five dollars and five cents, as appears by the said statement hereunto annexed. And Joseph Erwin, who was the payer and endorser of the notes mentioned in the said mortgage, being also present, declared that he assents and agrees to the stay of seizure and sale of the mortgaged premises before agreed to, considering this transaction to be the best arrangement which can be made for all parties in the premises.

And it is further stipulated and agreed, by and between all the parties, before named, that this transaction shall be entered upon the records of the said court of the United States for the eastern district of Louisiana, as aforesaid, and the same shall be entered up as a decree of said court, and shall have all the force and effect as though it were entered up in open court.

This done and passed in presence of John Stringer and John Peterkin, witnesses, who hereunto sign their names as such, with the parties and me, notary.

(Signed) ELIZA ERWIN,
ROBERT THOMPSON,
JOSEPH ERWIN,
JOSIAH BARKER,
JOHN PETERKIN,
S. STRINGER.

GEO. R. STRINGER, *Not. Pub.*

I certify the foregoing to be a true copy of the original act extant in my current register.

In faith whereof I grant these presents, under my signature and seal of office, on this 17th day of May, 1826.

[L. s.] (Sgd.) G. R. STRINGER, *Not. Pub.*

No. 5.

Know all men by these presents, that we, the Life and Fire Insurance Company, named and intended in and by the annexed certified copy of judgment, in consideration of the sum twenty thousand six hundred and fifty-eight dollars and fifteen cents, to us in hand paid by the Mercantile Insurance Company of New York, at the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have sold, and by these presents do sell, to Josiah Barker, as agent of, and in trust for, the said The Mercantile Insurance Company of New York, the judgment specified and described in and by the annexed paper writing, against the widow and children, and heirs of Nicholas Wilson, deceased, in favor of the said Josiah Barker, agent, and therein acting in the name and behalf of the Life and Fire Insurance Company, and all and singular the moneys therein specified, and thereby secured, and the interest due and to grow due thereon, and the moneys and debts in the said paper writing mentioned to become due and payable after the confession of the said judgment, and all and singular and right, title, and interest of, in, and to the said judg-

ment, and the moneys and debts therein, and in the said annexed paper writing mentioned, and the interest due, and to grow due thereon, to have and to hold the same unto the said Josiah Barker, his executors, administrators, and assigns, to his and their own proper use, benefit, and behalf, for ever, as agent and in trust for, the said The Mercantile Insurance Company of New York; and we, the said The Life and Fire Insurance Company, in consideration of the premises, have made, ordained, constituted, and appointed, and by these presents do make, ordain, constitute, and appoint the said Josiah Barker, his executors, administrators, and assigns, our true and lawful attorney and attorneys irrevocable, in the premises, in our names and stead, or otherwise; but to and for the proper use and benefit, and at the proper costs and charges, of the said The Mercantile Insurance Company of New York, their succesors or assigns, to take, adopt, pursue, and enforce, all lawful ways and means whatsoever in all courts and places whatsoever, for the recovery, collection, and payment, of the several sums of money specified in the annexed judgment and paper writing, and the interest due and to grow due upon the same, and to give, execute, seal, sign, and deliver, good and effectual acquittances and discharges therefor. In witness whereof, we, the said The Life and Fire Insurance Company have to these presents set our seal of incorporation, and cause the same to be subscribed by our president and secretary, in the city of New York, this twenty-eighth day of July, in the year of our Lord one thousand eight hundred and twenty-six.

J. G. SWIFT, *Ass't Pres't.*

Sealed and delivered in the presence of
THOMAS ADDIS EMMET, Jr.

M. L. DAVIS, *Sec'y.*

No. of notes and interest terminating on the 18th day of January, 1829, between the Life and Fire Insurence Company of New York, and Nicholas Wilson, deceased.

Note due May	18th,	1824, for	$1,200 00	4 years	8 mo.		$ 392 00
Nov.	18,	" "	967 50	4 "	2 "		282 45
Jan.	18,	1825, "	4,000 00	4 "	"		1,120 00
May	18,	" "	960 00	3 "	8 "		246 40
Nov.	18,	" "	725 00	3 "	2 "		160 70
Jan.	18,	1826, "	4,000 00	3 "			840 00
May	18,	" "	720 00	2 "	8 "		134 40
Nov.	18,	" "	483 75	2 "	2 "		73 36
Jan.	18,	1827, "	4,000 00	2 "			560 00
May	18,	" "	480 00	1 "	8 "		56 00
Nov.	18,	" "	242 50	1 "	2 "		19 79
Jan.	18,	1828, "	4,000 00	1 "			280 00
May	18,	" "	240 00		8 "		11 20
Jan.	18,	1829, "	4,000 00				
	Principal		$26,018 75				$4,176 30
	Interest		4,176 30				
			$30,195 05				

(Signed) JOSIAH BARKER,
ELIZA WILSON,
ROBERT THOMPSON,
JOS. ERWIN.

NEW ORLEANS, 16*th May*, 1826.

UNITED STATES OF AMERICA, *State of New York, ss.*

By this public instrument, be it known to all whom the same doth or may in any wise concern, that I, Thomas Addis Emmit, junior, public notary, in and for the State of New York, by letters patent, and the great seal of the said State, duly commissioned and sworn, dwelling in the city of New York:

Do hereby certify that, on the twenty-ninth day of July, 1826, personally appeared before me, Joseph Swift, to me known to be the assistant president of the Life and Fire Insurance Company, and Matthew L. Davis, to me know to be the secretary of the said company, and they each executed and acknowledged the foregoing annexed assignment in my presence, and affixed the seal of said company thereto, and acknowledged the same as their act and deed, for the uses and purposes therein mentioned, and as the act and deed of the said company.

In testimony whereof, I have subscribed my name, and caused my notarial seal of office to be hereunto affixed the twenty-ninth day of July, in the year of our Lord one thousand eight hundred and twenty-six.

(Signed) THOMAS ADDIS EMMIT, Junr.,
Notary Public.

Clerk's office, U. S. district court, Eastern District Louisiana.

I hereby certify that the foregoing assignment is a true copy from the original on file in this office among the other papers in the above case.

(Signed) BYRD B. WALLER, *D. C.*

At the request of Mr. Barker, I state that I have not acted in the capacity of dep. clerk U. S. court, since June or July, 1823; and that the foregoing copy and certificate was made in the year eighteen hundred and thirty-two; judging from the style of the hand writing at that time, and from the signature of the same.

(Signed) B. WALLER.

No. 6.

UNITED STATES OF AMERICA, *ss.*

[L. S.] *The President of the United States of America to the honorable Samuel H. Harper, Judge of the District Court of the United States for the Eastern District of Louisiana, greeting:*

Whereas a certain corporation, in the city of New York, called and known by the name of the Life and Fire Insurance Company, in the city of New York, hath heretofore, to wit, on the sixteenth day of May, in the year of our Lord one thousand eight hundred and twenty-six, commenced and prosecuted to judgment a certain action against the heirs and representatives of one Nicholas Wilson, deceased, in the district court of the United States for the eastern district of Louisiana, which said judgment you as judge of the said court, at a subsequent day, to wit, on the second day of June, in the year eighteen hundred and thirty-two, refused to sign, and to order execution to issue thereon, on the ground that as the successor of Judge Robertson you could not sign the same, and that the judgment must be, and could only be, signed by the judge who pronounced it, and that otherwise it became a nullity. And whereas, heretofore, to

wit, at a session of the Supreme Court of the United States, held at Washington on the second Monday of January, in the year of our Lord eighteen hundred and thirty-three, the said Supreme Court, at the instance of the said corporation, by counsel, granted a rule requiring you to show cause, if any you had, among other things, why a writ of mandamus from the said Supreme Court should not be awarded and issued to you, commanding you to sign the said judgment and to order execution to issue thereon; and whereas, at the present session of the said Supreme Court, you certified and returned to the said Supreme Court, together with the said rule, that you had refused to sign the said judgment on the ground that the judgment must be, and could only be, signed by the judge who pronounced it; and whereas, afterwards, to wit, at the same session of the said Supreme Court, last aforesaid, upon consideration of your said return, and of the cause shown by you therein against the said rule's being made absolute, and against the awarding and issuing of the said writ of mandamus, and upon consideration of the arguments of counsel, as well on your behalf, showing cause as aforesaid, as on behalf of the said corporation, in support of the said rule; it was considered by the said Supreme Court, that you had certified and returned to the said court an insufficient cause for having refused to sign the said judgment, and against the awarding and issuing of the said writ of mandamus pursuant to the rule aforesaid, the said Supreme Court being of opinion, and having determined and adjudged upon the matter aforesaid, that you were bound to sign the said judgment and to order execution to issue thereon; and it was also then and there considered, by the said Supreme Court, that the writ of the United States issue, requiring and commanding you, the said judge of the said district court, to sign the said judgment and to order execution to issue thereon. Therefore you are hereby commanded and enjoined, that immediately after the receipt of this writ, and without delay, you sign the said judgment and order execution to issue thereon, so that complaint be not again made to the said Supreme Court, and that you certify perfect obedience and due execution of this writ to the said Supreme Court, to be held on the first Monday of August next. Hereof fail not, at your peril, and have then there this writ.

Witness, the honorable John Marshall, Chief Justice of said Supreme Court, the second Monday of January, in the year of our Lord eighteen hundred and thirty-four.

WM. THOS. CARROLL,
Clerk of the Supreme Court of the United States.

No. 7.

THE LIFE AND FIRE INSURANCE COMPANY OF NEW YORK
vs.
THE HEIRS OF NICHOLAS WILSON. } No. 2,415.

In this case the plaintiffs having filed in this court a transaction entered into between the parties, before Greenbury Ridgley Stringer, esq., a notary public in and for the city of New Orleans, and the same being read to the court it is thereupon ordered, adjudged, and decreed, that in pursuance of said transaction, judgment be entered up in favor of the plaintiffs, for all the notes therein specified which have become due and payable, with 7 per cent. interest there-

on, from the time they, and each of them, respectively, arrived at maturity, to wit: the sum of eleven hundred dollars, due on the 18th day of May, 1824; the sum of nine hundred and sixty-seven dollars fifty cents, due 18th Nov. 1824; the sum of four thousand dollars, due on the 18th day of January, 1825; the sum of nine hundred and sixty dollars, due on the 18th day of May, 1825; the sum of seven hundred and twenty-five dollars, due on the 18th day of November, 1825; and the sum of four thousand dollars, due on the 18th day of January, 1826.

It is further ordered, adjudged, and decreed, in pursuance of the transaction aforesaid, that whenever any of the notes mentioned in said transaction, as yet not arrived at maturity, shall become due and payable, that then judgment shall be entered up for the plaintiffs upon all and every of the said notes, as they arrive at maturity with seven per cent. interest from the time they severally become due and payable until their final payment.

It is further ordered, adjudged, and decreed, that there shall be a stay of execution on said judgment until the 18th day of January, 1829; and that if the amount of the judgment in this suit is not then paid, including principal, and interest, and costs, on said day, that the said slaves and moveable property described in the mortgage mentioned in the plaintiffs' petition, shall be sold, according to law, to satisfy the judgment in the premises.

It is further ordered that the defendants pay costs.

(Signed) SAM'L H. HARPER, *Judge U. S.*

Judgment entered 18th May, 1826.

Judgment signed March 7, 1834.

(Signed) SAMUEL H. HARPER, *Judge U. S.*

No. 8.

U. S. District Court, *East. Dis. Louisiana.*

Saturday, 8*th March*, 1834.

Life and Fire Insurance Company
vs.
The Heirs of Nicholas Wilson.

On motion of George Eustis, esq., counsel for the plaintiffs on the filing of all the notes referred to in the transaction on file, it is ordered, in pursuance of the mandamus of the Supreme Court, requiring the honorable the judge of this court to sign the judgment rendered in the premises, and to order execution to issue; that execution do issue, for the whole amount of the judgment.

Extract from the minutes.

(Signed) DUNCAN N. HENNEN, *Clk.*

No. 9.

District Court of the United States, *in and for the Eastern District of Louisiana.*

The President of the United States, to the Marshal of the Eastern District of Louisiana, or to his lawful Deputy, greeting:

You are hereby commanded that you demand from the heirs of Nicholas

Wilson the sum of the following notes, with seven per centum per annum, on all and every of them, from the respective days of maturity until final payment, viz.: $1,200, due 18th May, 1824; $967 50, due 18th Nov., 1824; $4,000, due Jan. 18th, 1825; $960, due May 18th, 1825; $725, due 18th Nov., 1825; $4,000, due 18th Jan. 1826; $720, due May 18th, 1826; $483 75, due 18th Nov., 1826; $4,000, due January 18th, 1827; $480, due May 18th, 1827; $242 50, due Nov., 18th, 1827; $4,000, due Jan. 18th, 1828; $240, due May 18th, 1828; $4,000, due 18th January, 1829: with costs of suit, cash which the Life and Fire Insurance Company of N. Y. lately recovered by judgment of the district court of the United States for the said district; and if they shall not pay the same on demand, that then you cause the same to be made, out of the personal estate of the said heirs of N. Wilson, except slaves in your district, if sufficient personal estate, exclusive of slaves, can be found therein; but, if sufficient personal estate of the said heirs of Nicholas Wilson, exclusive of slaves, cannot be found in your district, that then you cause the same to be made out of the real estate and slaves of the said heirs mentioned in the annexed copies of petition and mortgage, or generally out of their real property in your district, whereof they were owners on the 18th day of May, 1826, last past, into whose hands soever the same may have come; and that you have those moneys before our said court, to render to the said Life and Fire Insurance Company of New York, for the judgment aforesaid, on the 3d Monday of May, 1834, together with this writ.

Witness the hon. Samuel H. Harper, judge of the said court, this 10th day of March, 1834.

(Original Signed) DUNCAN N. HENNEN, *Clk.*

Marshal's return.—Rec'd 10th March 1834, and returned on the 12th inst., not executed, by instructions from George Eustis, esq., plff.'s att'y.

(Signed) JOHN NICHOLSON,
U. S. Marshal.

No. 10.

NEW ORLEANS, 10*th March*, 1834.

SIR: There being an error in form in the writs issued in the cases of the Life and Fire Insurance Company vs. Christopher Adams, and the heirs of Wilson, I request you to return them immediately *not executed.*

Your obt. servt.,

(Signed) G. EUSTIS, *Plff.'s Att'y.*

J. NICHOLSON, Esq., *Marshal.*

No. 11.

The clerk of the United States' district court is requested to cancel the within execution, and to issue a new execution for the same amount, and of similar import, except that you direct the marshal to seize and sell, *firstly*, the lands, slaves, and moveable property mentioned in the act of mortgage of Nicholas Wilson to the Life and Fire Insurance Company, dated the 16th day of January, 1824; which lands, slaves, and moveable property, were owned, at that period, by the said Nicholas Wilson, now deceased.

(Signed) JOSIAH BARKER.

N. ORLEANS, 11 *March*, 1834.

No. 12.

DISTRICT COURT OF THE UNITED STATES, *for the Eastern District of Louisiana.*

LIFE AND FIRE INSURANCE COMPANY
vs.
THE HEIRS OF NICHOLAS WILSON.

Be it known and remembered that, on the tenth day of March, eighteen hundred and thirty-four, I, Josiah Barker, successor to the title to, and control over certain notes, debts, dues, and demands, hereinafter enumerated, with full and irrevocable powers in the premises, filed in this court, from the Life and Fire Insurance Company, do hereby, in behalf of the defendants, the heirs of Nicholas Wilson, by virtue of a certain compromise entered into between the aforesaid heirs of Nicholas Wilson, of the parish of Iberville, in this State, on the one part, and Josiah Barker, agent, and therein acting for, and in behalf of the Life and Fire Insurance Company, of the other part, on the sixteenth day of May, eighteen hundred and twenty-six; which compromise was confirmed by decree of this court, entered on its records on the eighteenth day of May, eighteen hundred and twenty-six, and signed by the honorable Samuel H. Harper, on the seventh day of March, eighteen hundred and thirty-four, pursuant to mandamas granted by the Supreme Court of the United States in February last, confess judgment to the plaintiffs in the above entitled cause, the same having been omitted or neglected by the said heirs of Nicholas Wilson in the following sums, for which the notes of the said Nicholas Wilson enumerated in the aforesaid compromise, remain unpaid, and have been filed in this honorable court, pursuant to the terms of the said compromise, viz.: for the sum of seven hundred and twenty dollars, due on the eighteenth day of May, eighteen hundred and twenty-six, with interest, at the rate of seven per cent. per annum from that date, until paid.

The sum of four hundred and eighty-three dollars and seventy-five cents, with interest, at the rate of seven per cent. per annum, from the eighteenth day of November, eighteen hundred and twenty-six, until paid.

The sum of four thousand dollars, with interest, at seven per cent. per annum, from the eighteenth day of January, eighteen hundred and twenty seven, until paid.

The sum of four hundred and eighty dollars, with interest, at seven per cent. per annum, from the eighteenth day of May, eighteen hundred and twenty-seven, until paid.

The sum of two hundred and forty-two dollars and fifty cents, with interest, at seven per cent. per annum, from the eighteenth day of November, eighteen hundred and twenty-seven, until paid.

The sum of four thousand dollars, with interest, at seven per cent. per annum, from the eighteenth day of January, eighteen hundred and twenty-eight, until paid.

The sum of two hundred and forty dollars, with interest from the eighteenth day of May, eighteen hundred and twenty-eight, at seven per cent. per annum, until paid.

The sum of four thousand dollars, with interest, at seven per cent. from the eighteenth day of January, eighteen hundred and twenty-nine, until paid.

And I do hereby request, direct, and agree, that this confession of judgment be entered upon the records of the district court of the United States,

for the eastern district of Louisiana, as the decree of said court; and that i shall have all the force and effect as though it were entered up in open court.

(Signed) JOSIAH BARKER.

No. 13.

DISTRICT COURT OF THE UNITED STATES, *Eastern District of Louisiana.*

The President of the United States, to the Marshal of the Eastern District of Louisiana, or to his lawful Deputy, greeting:

You are hereby commanded, as you have heretofore been, to demand from the heirs of Nicholas Wilson the amount of the following notes, with seven per cent. per annum interest, upon all and every of them from their respective days of maturity, until final payment, viz.: $1,200, due 18th May, 1824; $967 50, due 18th November, 1824; $4,000, due 18th January, 1825; $960, due May 18th, 1825; $725, due November 18th, 1825; $4,000, due January 18th, 1826; $720, due May 18th, 1826; $483 75, due 18th November, 1826; $4,000, due January 18th, 1827; and $480, due May 18th, 1827; $242 50, due November 18th, 1827; $4,000, due 18th January, 1828; $240, due May 18th, 1828; $4,000, due 18 January, 1829; with costs of suit, cash which the Life and Fire Insurance Company of New York, lately recovered by judgment of the district court of the United States for the said district; and, if they shall not pay the same on demand, that then you cause the same to be made out of the lands, slaves, and moveable property, found in your district, mentioned in the act of mortgage referred to in plaintiffs' petition; but should these be insufficient, then out of the property, personal or real, which belonged to the said heirs, on the 18th day of May, 1826, found in your district, into whose hands soever the same may have come.

And that you have those moneys before our said court, to render to the said Life and Fire Insurance Company of New York, for the judgment aforesaid, on the third Monday of May, 1834, together with this writ.

Witness the hon. Saml. H. Harper, judge of the said court, this 12th day of March, 1834.

DUNCAN N. HENNEN, *Clk.*

Clerk's fees, $29 66⅔.
Marshal do. $

No. 14.

NEW YORK, *4th April,* 1434.

JOHN NICHOLSON, Esq., *U. S. Marshal for the East. Dist. of Louisiana*

DEAR SIR: I am informed that Mr. Chesnut is in town, wishing to bond the sugar seized on the plantation in the case of the Life and Fire Insurance Company vs. the Heirs of Nicholas Wilson.

I object to your delivering the sugar on any terms, except on an order of court authorizing it; this is not a case where a party can replevy; at all events it is the duty of the marshal to hold all goods seized on an execution, until sold or until the debt be paid, and not to move otherwise in the business without an order of court.

Your obt. servt.,
JACOB BARKER, *Attorney for*
JOSIAH BARKER.

No. 15.

UNITED STATES COURT, *East. Dist. of Louisiana.*

TUESDAY, *8th April*, 1834.

Special court. Present Hon. Samuel H. Harper.

LIFE AND FIRE INSURANCE COMPANY OF NEW YORK *vs.* THE HEIRS OF NICHOLAS WILSON. } No. 2,415.

On motion of Alfred Hennen, esq., in behalf of David D. Chesnut, testamentary executor of Mrs. Eliza Wilson, and on filing the affidavit of the said Chesnut—

It is ordered by the court that the counsel of the plaintiffs show cause, on Saturday next, at 12 o'clock, why the execution which has issued in this case should not be quashed and annulled.

Extract from the minutes.

DUNCAN N. HENNEN, *Clerk.*

No. 16.

LIFE AND FIRE INSURANCE COMPANY OF NEW YORK *vs.* THE HEIRS OF NICHOLAS WILSON. } No. 2,415.

David Dunmore Chesnut, being duly sworn, doth depose and say—

That Mrs. Eliza Wilson, the widow of Nicholas Wilson, departed this life at Iberville, on the third day of January, of this present year 1834, and has made a will in which this deponent is named the sole testamentary executor by her; and as such has been qualified in the court of probates for the parish of Iberville.

That Robert Thompson departed this life about five or six years ago; that all the heirs of the said Nicholas Wilson are either married women, or minors.

(Signed) D. D. CHESNUT.

Sworn to and subscribed before me, this 8th day of April, 1834.

(Signed) DUNCAN N. HENNEN, *Clerk.*

No. 17.

LIFE AND FIRE INSURANCE COMPANY OF NEW YORK *vs.* NICHOLAS WILSON. } No.

Let the mortgaged premises set forth and stated in the plaintiffs' petition be seized and sold as therein prayed for, and in the manner directed by law, subject to the payment of debt of plaintiffs.

(Signed) T. B. ROBERTSON,

Judge of the U. S. East. Dist., Louisiana.

NEW ORLEANS, *May* 15, 1826.

No. 18.

LOUISIANA, *First Judicial District.*

To the Honorable Charles Watts, Judge of the District Court for the first Judicial District of the State of Louisiana:

The petition of David Dunmore Chesnut, testamentary executor of Eliza Wilson, deceased, residing in the parish of Iberville,

RESPECTFULLY SHOWETH,

That your petitioner has been duly appointed testamentary executor of the said Eliza Wilson, who departed this life on the 3d day of January last past, in the parish of Iberville aforesaid; that among other property left by the said Eliza Wilson, at her death, is the following: a plantation situated in the parish of Iberville, on the right bank of the river Mississippi, about one league below the Bayou Plaquemine, measuring twelve arpens in front on the river, by eighty arpens in depth, bounded above by land lately belonging to Joseph Erwin, and below, by the land of Pauline Latile, with all the buildings and improvements thereon, and the appertenances thereto belonging, known by the name of Evergreen plantation, having thereon a sugar-house, saw-mill, dwelling-house, eight negro houses, and also the following slaves, to wit: Ben, Rixon, Big Charles, Little Charles, John Cryg, Dick, Isaac, Nathan, Bill, Yellow Joe, Black Joe, Jenny, Fanny, Sal, Rachael, Felicite, Susan, John Beaver, Yellow Isaac, Keytry Warrick, Hester, John Carroll, Mary, Yellow Warrick, being twenty-five in number, and attached to said plantation; which property aforesaid was duly and legally acquired by the said Eliza Wilson, by adjudication to her in the court of probates for the parish of Iberville, from the estate of her deceased husband, Nicholas Wilson, by judgment rendered the 22 Nov., 1825, by John Dutton, judge of the court aforesaid, and the said Eliza Wilson was in possession of the same, under the said judgment, on the day of its rendition, and continued to use the same at her sole property, and was in possession of the same on the day of her death.

Your petitioner further shows that he, as executor of the said Eliza Wilson, took possession of the same as part of her estate, and was so in possession, until the 31st March, 1834, when John Nicholson, esq., marshal of the United States of the district court of the United States of the eastern district of Louisiana, having a writ of fieri facias, directed to him from said court, in the suit of the Life and Fire Insurance Company of N. Y., against the heirs of N. Wilson, seized the aforesaid property, then in the hands of your petitioner, and has taken the same into his possession, and now is about to sell the same under said execution, which is directed against the heirs of the said Nicholas Wilson only, and not against the said Eliza Wilson, whose property it was, as stated above, nor against the heirs of the said Eliza Wilson, and the said John Nicholson will dispose of the same unless prohibited.

Now your petitioner shows that the aforesaid property is not legally liable to seizure under the said writ of fieri facias; that the said Nicholson has exceeded the authority given him by law, and has committed a trespass in seizing the same, and is about to continue his trespass by selling the said property, which was legally vested in the estate of the said Eliza Wilson.

That said property is of the value of sixty thousand dollars, and your petitioner will suffer damage to the amount of sixty thousand dollars, if it is sold and disposed of by the said Nicholson.

Wherefore, your petitioner prays that the said John Nicholson, residing in New Orleans, may be enjoined from proceeding to sell the said property above-described, to wit, the plantation and negroes aforesaid; that he may be condemned to deliver them up to your petitioner, as the property of the estate of the said Eliza Wilson; and that in default thereof, he may be condemned to pay the value thereof, to wit, the sum of sixty thousand dollars; and your petitioner further prays that he may be condemned to pay your petitioner sixty thousand dollars, for his trespass aforesaid, and the damages caused by him in the premises; and your petitioner prays for all such other and further relief as the case may require, and to equity they seem meet, and as in duty bound.

A. HENNEN, } *Fript.*
L. PERIER, }

David D. Chesnut, the petitioner above-named, having duly sworn, doth depose and say that the property above-described in the foregoing petition has been adjudged as therein stated, and the title to the same hath therein been correctly set forth; that the seizure thereof has also been truly and correctly stated; that the marshal is about to sell the same without legal authority, as the petitioner has been advised and believes; that all the material allegations above averred are just and true.

(Sgd.) D. D. CHESNUT.

Sworn to, and subscribed before me, this 4 April, 1834.

JNO. L. LEWIS, *Clk.*

No. 19.

STATE OF LOUISIANA, *First Judicial District.*

John Nicholson, Esq., Marshal of the United States for the Eastern District of Louisiana, residing in New Orleans:

You are hereby summoned to comply with the demand contained in the petition, of which a copy accompanies this citation, or deliver your answer to the same in the office of the clerk of the first judicial district court, in the city of New Orleans, in ten days after the service thereof.

Witness, the honorable Joshua Lewis, judge of the said court, the seventh day of April, in the year of our Lord 1834.

(Sgd.) JNO. L. LEWIS, *Clerk.*

DAVID D. CHESNUT }
vs. } No. 11,250
JOHN NICHOLSON. }

No. 20.

LIFE AND FIRE INSURANCE COMPANY }
vs. }
THE HEIRS AND REP. OF NICHOLAS WILSON. }

This is a motion on the part of the defendants to quash and annul the execution issued in this case against their property.

The motion comes up for hearing out of term, but that objection is waived

of record, nor has any objection been made as to the *mode* of application. The execution complained of has issued on what the Suprame Court of the United States has recognized as a judgment rendered by my immediate predecessor, Judge Robertson, on the 18th day of May, 1826. Fortunately the question before me does not involve the necessity of examining the *grounds* of that judgment. I say fortunately, for it would be an Herculian labor to investigate and expose the many irregularities and illegal proceedings had in the case, from the beginning to the present moment, which have equally affected the rights of all parties; and this, among other things, prevented me from signing the judgment of my predecessor; but I was unable to satisfy the appelate court of the propriety of my refusing to sign it, and that high tribunal, by its *mandamus*, has ordered me to sanction it by my signature, which has been affixed, and, in consequence, this execution has issued; and now the main question is, what is the proper construction to be given to the judgment which it has ordered me to sign? It is not to be presumed that, on an application to award a *mandamus*, that court undertook to investigate the *merits* of the judgment, but simply to decide the point whether or not I was bound to sign it; and, therefore, when a question like the present comes before me, it is my duty to ascertain, if I can, what is the purport of the judgment which I have signed in obedience to the *mandamus*. The judgment is as follows:

(Here the clerk will insert it.)

It is clear that, at the time of entering this judgment, there was then actually due to the plffs. only $11,852 50, with interest, at the rate of seven per cent. per annum: for so much then the judgment was complete; but it proceeds, according to the stipulation of the parties, and orders, that, as to the other notes of the defendants not then due, judgment should be *confessed* and entered up on each as they successively become due; but no execution was to issue in the case, until the last note became due, and the debt should still remain unpaid. Now it is manifest that this stipulation contemplated a *separate* and distinct *judgment* of this *court* for the amount of each note as it became due; yet none was ever entered or prayed for, either at the hands of my predecessor or myself.

Although the *signing* of a judgment may be considered a mere formal act, which I by no means admit, yet I think the doctrine will hardly be carried so far as to say that an execution can legally issue without a previous judgment.

But in this case it has issued, not only for the amount due at the time of the rendition of the judgment, but also for the amount for which no judgment was ever obtained, viz.: for the amount of each note subsequently due. On the filing of the *mandamus*, the plaintiffs discovering that the judgment was not quite wide enough to cover the whole of their claim, through Mr. Josiah Barker, calling himself an agent, with full power to confess judgment for the defendants, granted to him, before any judgment at all had been obtained they moved the court, *ex parte*, to confess judgment for the balance of the notes. To granting this motion, there were two objections; 1. the parties, for whom he offered to confess judgment, ought to have had notice in order to afford them an opportunity to contest his right to do so, if they thought proper; and 2. Mrs. Wilson, one of the parties against whom a recovery is sought, was then dead: against whom, according to the local laws, no judgment could be rendered, and being dead, the power granted by him to confess judgment in her *name* was void at her death. 2 Mason, 244,

1 Comyns, 755. Here then was a new judgment asked of the court; but, in order to give it validity, it would have been necessary that the judge should sign it.

The *mandamus* ordered me to sign and make executory a judgment rendered on the 18th day of May, 1826, with which I have complied; but it does not require me to enter up and sign another judgment on the same subject matter, on the 10th day of March, 1834.

For all these reasons no judgment was entered; and yet the execution, now under consideration, was issued by the clerk at the request of the plaintiffs for a sum of money for which no judgment ever existed. The paper purporting to be an authority to confess the judgment, and that containing the confession itself, in the absence of the adverse party, were permitted to be filed "subject to any legal exceptions of the defendants."

This filing was on the 16th March, 1834, and on the same day an execution was taken out. Now, if the judgment had been regularly entered according to the local law, and the practice of this court, as prescribed by a written rule, and sanctioned by the act of Congress, of the 26th May, 1824, regulating the practice in this form, execution could not have legally issued until the expiration of three days from the rendition of the judgment; the execution, therefore, so far as it embraces the amount expressed, is null and void. Whether it ought to be quashed *in toto* is the remaining question.

If I have construed correctly the judgment which the S. Court has ordered to be made executory, it is clear, that the execution it required me to cause to be issued, must correspond with the judgment; and if one has issued erroneously it must be set aside and a new one awarded. On the 15th day of May, 1826, three days before the original judgment was rendered, the plaintiffs applied to the court for what we call an order of "seizure and sale," founded on a mortgage, alleged to have been given by Nicholas Wilson. This order was made by the judge; but the record does not show that a *writ* upon it once issued from the clerk's office; at all events it was never executed; because, in the mean time, a compromise was entered into between the parties on which the judgment in question was founded; and it is now contended by the plaintiffs that this order of seizure and sale has been only *suspended*, and now by virtue of the completion of the judgment it is to have its full operation. The writ of seizure and sale is a process peculiar to the Spanish law, which, in itself, implies a previons judgment, and is the *original* process; and I do verily believe that were I to sustain a writ of this kind, which is totally unknown to the common law, that, on appeal, the judgment would be reversed for that very reason; but the parties themselves have waived this process, for they have expressly agreed in the act of compromise, that in case the debt should not be paid at the time stipulated, that a *fieri facias eo nomine* should issue, reserving, however, the right to seize *specially* the lands, slaves, and moveable property mortgaged. This is a common law writ, and is directed against all the goods of the debtor; but in this case, by compact, it is confined to special property. But whether it be general or special the practice under it in this state is, that the marshal shall demand from the defendant the amount of the judgment before he is authorized to seize his property; but if the debt be not paid at the end of that time, he must levy on his property. In this case the marshal is presumed to have demanded of the defendant the payment of some $30,000. For this sum there was no judgment, and, therefore, they were not bound to pay it; and he demanded the amount of $11,852 50, for

which there is a judgment. They might have been prepared to pay it, and if not, then he would have been authorized to seize and sell their property to make that amount. The object of the law is to afford a party an opportunity of paying his just debts, without the inconvenience and disagreeableness of seizing his property; but if more is demanded than is due, the object of the law is defeated while a writ of *fieri facias* is in the hands of the clerk; he may correct any errors he may have committed in issuing it, for until it goes out of his office it is considered in possession of the court; but when it comes into the hands of the executive officer of the court he has no authority to amend or alter it. He is bound to execute it *literally*, unless restrained by the party suing it out, or by the mandate of the proper court. He cannot on the day of sale say to the debtor the writ is erroneous, pay *one-half* of the sum *first* demanded and your property shall be released. If he should do so he would lay himself liable to damages for having made a tortuous seizure, nor would an order of the court, reducing the amount made *subsequent* to the seizure excuse him, for that would be an act expost facto; it would be otherwise if he executed, literally, an illegal writ *previously* directed by the court. For these reasons the writ must be quashed.

No. 21.

UNITED STATES DISTRICT COURT, *for the Eastern District of Louisiana.*

Special court. SATURDAY, 19*th April*, 1834.

Present honorable Saml. H. Harper

LIFE AND FIRE INSURANCE COMPANY OF NEW YORK *vs.* THE HEIRS OF NICHOLAS WILSON. } No. 2,415.

The court having maturely considered this case, now order, adjudge, and decree, that the rule taken on the plaintiffs to show cause why the execution served out by them in this case should not be quashed and annulled, be made absolute, and that said execution be quashed and annulled, as having issued for more than than the amount of the judgment obtained, and that a *fieri facias* issue against the property mortgaged for the sum of eleven thousand eight hundred and fifty-two dollars and fifty cents, being the whole amount of the judgment rendered on the 18th May, 1826, with interest on each note comprehended in that judgment, at the rate of seven per centum per annum, from the time each note became due until final payment, and costs of suit.

No. 22.

DISTRICT COURT OF THE UNITED STATES, *Eastern District of Louisiana.*

The President of the United States to the Marshal of the Eastern District of Louisiana, or to his lawful Deputy, greeting:

You are hereby commanded to levy on, seize, and sell, the property described in the mortgage annexed to plaintiffs' petition in suit No. 2,415, of the docket of suits in this court, entitled The Life and Fire Insurance Company of New York *vs.* The Heirs of Nicholas Wilson, to satisfy the said Life

and Fire Insurance Company of the sum of eleven thousand eight hundred and fifty-two dollars and fifty cents, with interest, at the rate of seven per cent. per annum upon $1,200 thereof, from the 18th day of May, 1824, until paid; with like interest upon $967 50 thereof, from the 18th day of November, 1824, till paid; with like interest upon $4,000, from the 18th day of January, 1825, till paid; with like interest upon $960 thereof, from the 18th day of May, 1825, till paid; with like interest upon $725 thereof, from the 18th day of November, 1825, until paid; with like interest upon $4,000 thereof, from the 18th day of January, 1826, until paid; cash which the said Life and Fire Insurance Company lately recovered by judgment of the district court of the United States for the said district; which property in the above-mentioned mortgage referred to, you shall levy on, seize, and sell, into whose hands soever the same may have come.

And that you have those moneys before our said court, to render to the said Life and Fire Insurance Company, for the judgment aforesaid, on the third Monday of May, 1834, together with this writ.

Witness the hon. Samuel H. Harper, judge of the said court, [L. S.] this 19th day of April, A. D. 1834.

(Sgd.) DUNCAN N. HENNEN, *Clk.*

Clerk's fees $43 33⅓
Marshal do. $
Attorney tax fees $

No. 23.

NEW ORLEANS, 18*th Nov.*, 1823.

On the eighteenth day of January, eighteen hundred and twenty-nine, I promise to pay to Joseph Erwin or order, at the office of the Life and Fire Insurance Company in the city of New York, four thousand dollars for value received.

Dollars, $4000 N. WILSON.

Endorsed,
JOSEPH ERWIN,
Pay to H. ECKFORD, Esq.
WM. KENNER, & Co.,
H. ECKFORD.

NE VARIATUR, NEW ORLEANS, 14*th January*, 1834.
CARLILE POLLOCK, *Not. Pub.*

No. 24.

PLAQUEMINE, *Dec.* 16*th*, 1826.

SAMUEL M. SPRAGINS, Esq.

DEAR SIR: Please to take notice that the debt heretofore owing by the estate of Nicholas Wilson, esq., to the Life and Fire Insurance Company of New York, under confession of judgment, bearing date May, 1826, has been by that company assigned to me in trust for the Mercantile Insurance Company of New York, and that I accordingly require you, as administrator of that estate to pay the same to me.

Respectfully,
Your obedient servant,
JOSIAH BARKER.

I acknowledge the receipt of the above notification.

S. M. SPRAGINS.

Atttest: R. BELL.

PLAQUEMINE, *Dec.* 16, 1826.

No. 25.

I, John Dutton, in and for the parish of Iberville, do hereby certify that Samuel M. Spragins was appointed *curator* of the estate of Nicholas Wilson, deceased, on the fourth day of September, in the year eighteen hundred and twenty-six; that the said curatorship expired one year thereafter, and was never renewed.

In witness whereof, I have hereunto, set my hand and public seal, this 29th day of May, in the year eighteen hundred and twenty-nine.

[L. S.] JOHN DUTTON, *P. Judge.*

No. 26.

UNITED STATES' COURT, *Eastern District of Louisiana,* } Judicial Mortgage, No. 560.

IN THE SUIT OF THE LIFE AND FIRE INSURANCE COMPANY OF NEW YORK *vs.* THE HEIRS OF NICHOLAS WILSON, DECEASED.

In this case the plaintiffs having filed in this court a transaction entered between the parties before Grenbury Ridgley Stringer, esq., a notary public in and for the city of New Orleans, and the same being read to the court:

It is therefore ordered, adjudged, and decreed, that in pursuance of said transaction, judgment be entered up in favor of the plaintiffs, for all the notes therein specified, which have become due and payable, with seven per cent. interest thereon from the time they and each of them respectively arrived at maturity, to wit:

The sum of twelve hundred dollars, due on the eighteenth day of May, eighteen hundred and twenty-four.

The sum of nine hundred and sixty-seven dollars and fifty cents, due on the eighteenth day of November, eighteen hundred and twenty-four.

The sum of four thousand dollars, due on the eighteenth day of January, eighteen hundred and twenty-five.

The sum of nine hundred and sixty dollars, due on the eighteenth day of of May, eighteen hundred and twenty-five.

The sum of seven hundred and twenty-five dollars, due on the eighteenth day of November, eighteen hundred and twenty-five.

And the sum of four thousand dollars, due on the eighteenth day of January, eighteen hundred and twenty-six.

And it is further ordered, adjudged, and decreed, in pursuance of the transaction aforesaid, that whenever any of the notes mentioned in the said transaction as not yet arrived at maturity, shall become due and payable, that then judgment shall be entered up for the plaintiffs, upon all and every of said notes as they arrive at maturity, with seven per cent. interest from the time they severally become due and payable, until their final payment.

It is further ordered, adjudged, and decreed, that there shall be a stay of execution on said judgments, until the eighteenth day of January, eighteen

hundred and twenty-nine. And that, if the amounts of the judgments in the suit is not paid, including principal, interest, and costs, on said day, that the land, slaves, and moveable property described in the mortgage mentioned in the plaintiffs' petition, shall be sold according to law, to satisfy the judgments in the premises.

It is further ordered, adjudged, and decreed, that the defendants pay costs.

No. 27.

DISTRICT COURT OF THE UNITED STATES, *Eastern District of Louisiana.*

THE LIFE AND FIRE INSURANCE COMPANY OF NEW YORK
vs.
THE HEIRS OF NICHOLAS WILSON.

THE SAME
vs.
CHRISTOPHER ADAMS.

Franklin W. Lea, being duly sworn, deposes and says that he acted as deputy clerk of the district court of the United States for the eastern district of Louisiana, on the 18th day of May, 1826, about which time judgment was rendered in the cases in favor of the plaintiffs, and that shortly afterwards, when Judge Thomas B. Robertson was about leaving the city, the deponent reminded him that these judgments had not been signed; to which Judge Robertson replied, (as well as deponent recollects,) that he was sick and about leaving town, and that he would not attend to business for any one.

(Signed) F. W. LEA.

Sworn to, and subscribed before me, at the parish of St. Tammany, this 29th May, 1834.

I certify that the above instrument of writing was duly sworn to before me, this the twenty-ninth May, A. D. 1834.

SAMUEL THOMPSON, *J. P.*

No. 28.

Received this process 19th April, 1834.

Served—On the 21st and 22d served on and took possession of all the property I could find described in the mortgage annexed to plaintiffs' petition, and after complying with all the formalities of the law, advertised the same for sale, to take place on the premises in the parish of Iberville, on the 24th May, 1834.

(Signed) L. C. BACON, *Dep. Marshal.*

Returned 19 May, 1834.

(Signed) JOHN NICHOLSON,
U. S. Marshal.

No. 29.

I, John Dutton, judge in and for the parish of Iberville, and recorder of mortgages in and for the said parish, do hereby certify that the following

mortgages, and no others, exist on said records, inscribed in the name of Nicholas Wilson, and against him. 1st. One special mortgage for the sum of twenty thousand dollars, recorded 5th April, 1820, on a plantation situate in the parish of Iberville, on the right bank of the Mississippi, measuring about 12 arpens front, by eighty arpens in depth, bounded above by Joseph Erwin, and below by Antonio Leonard, and the slaves Ben, Clyde, Rixon, Big Charles, Little Charles, Grigg, Dick, Isaac, Nathan, Bill, Yellow Joe, Black Joe, Andrew—men; and Jenny, Fanny, Hannah, Sally, Sal, Rachel, Felicity and her child Henry, Susan and her child Bob—women and children. 2d. One legal mortgage resulting from his appointment of curator to the vacant estate of Jacob Barker, deceased, for ten thousand dollars, recorded 1st September, 1821. 3d. One special mortgage in favor of the Life and Fire Insurance Company of New York, for the sum of twenty-six thousand and eighteen dollars and seventy-five cents, recorded the 24th day of January, 1824, on the above described plantation, and the following slaves: Ben, 30 years; Rixon, 30 years; Big Charles, 28 years; Little Charles, 28 years; John Grigg, 30 years; Dick, 30 years; Isaac, 40 years; Nathan, 30 years; Bill, 25 years; Yellow Joe, 30 years; Black Joe, 45 years; Jenny, 30 years; Fanny, 25 years; Hannah, 30 years; Sally, 27 years; Sal, 27 years; Rachel, 22 years; Felicity, 22 years, with her child Nansy, 4 years; Susan, 27 years; Jack Hunter, 33 years; John Beaver, 15 years; Jerry, 22 years; Yellow Jack, 18 years; Kezzy, 25 years, Harriet, 20 years; Hester, 22 years; Washington, 7 years; John Carroll, 7 years; Mary, 7 years; Yellow Harriet, 6 years; Dave, 3 years; Peter, 7 years; and Hester, 2 years. 3d. One judicial mortgage against the heirs of said Nicholas Wilson, recorded the 27th day of March, 1834, in favor of the Life and Fire Insurance Company of New York, for the sum of eleven hundred dollars, due on the 18th day of May, 1824; the sum of $967 50, due on the 18th day of November, 1824; the sum of four thousand dollars, due on the 18th day of January, 1825; the sum of $960, due on the 18th day of May, 1825; the sum of seven hundred and twenty-five dollars, due on the 18th day of November, 1825; and the sum of $4,000, due on the 18th day of January, 1826; with seven per cent. interest from the time the said notes severally become due.

In testimony whereof I have hereunto set my hand and public seal, this 24th day of May, in the year eighteen hundred and thirty-four.

[L. S.] (Signed) JOHN DUTTON, *Judge.*

The above is a true copy of the certificate of mortgage I received from Judge Dutton, on the 24th May last, in the parish of Iberville.

L. C. BACON,
U. S. Dep. Marshal.

NEW ORLEANS, *5th June*, 1834.

No. 30.

I, John Dutton, parish judge in and for the parish of Iberville, do hereby certify that on the property of Nicholas Wilson, esquire, said property now existing in this parish, to wit: A plantation of twelve arpens front, by eighty arpens in depth, bounded by Joseph Erwin and A. Leonard, and the follow-

ing slaves: Ben, Rixon; 3, Big Charles; 4, Little Charles; 5, John Grigg; 6, Dick; 7, Isaac; 8, Nathan; 9, Bill; 10, Yellow Joe; 11, Black Joe; 12, Jenny; 13, Fanny; 14, Hannah; 15, Sally; 16, Sal; 17, Rachel; 18 and 19, Felicite and her child Henry; 20, Susan. There exists no mortgage on record in my office, except one in favor of William Kenner & Co., for security of the payment of the sum of twenty thousand dollars, dated and recorded the fifth day of April, eighteen hundred and twenty, and on the following property of the said Nicholas Wilson, now existing in this parish, and in his possession, viz.: Jack Hunter; 2, John Beaver; 3, Jerry; 4, Yellow Isaac; 5, Kizzy; 6, Harriet; 7, Hester; 8, Washington; 9, John Carrol; 10, Mary; 11, Yellow Harriet; 12, Dave; 13, Peter; and 14, Hester. No conventional or judicial mortgage whatever exists in my office.

Given and attested under my hand and public seal, this thirty-first day of December, in the year of the Lord, eighteen hundred and twenty-three.

JOHN DUTTON,
Parish Judge of Iberville Parish.

I, the undersigned notary, do hereby certify the foregoing to be a true copy of the original certificate annexed to the margin of an act of mortgage passed before me, on the fourteenth day of January, 1824, from N. Wilson, in favor of the Life and Fire Insurance Company. In faith whereof I grant these presents, under my signature and seal of office, at New Orleans, this fourth day of June, 1834.

CARLILE POLLOCK, *N. P.*

No. 31.

I, John Dutton, parish judge in for the parish of Iberville, do hereby certify that the mortgage, made by Nicholas Wilson, in favor of William Kenner & Co., of the city of New Orleans, by act before me passed the 5th day of April, 1820, and recorded in book C, No. 245, for the sum of twenty thousand dollars; $20,000 has this day been erased, on the records of my office, by virtue of an act of release, passed before Carlile Pollock, notary public, in New Orleans, dated the fourteenth day of January, in the year of our Lord one thousand eight hundred and twenty-four, 1824.

Given under my hand and public seal, this 4th day of June, 1834.

JOHN DUTTON, *Judge.*

No. 32.

PLAQUEMINE, *9th June*, 1834.

Mr. JACOB BARKER,

SIR: Mr. Gammier handed me your letter of the 7th instant, in which you request him to procure from me a "*certified copy of the record made at his office on or about the 24th January*, 1824, of a release *by Richard Clague, before Carlile Pollock, a notary, on the 14th January*, 1824, of a mortgage *made by Wm. Kenner & Co., on the 5th of April*, 1820." This designation is not sufficiently exact to enable me to ascertain the copy you wish. If you will send me a copy of the release from the notary who made it, (as he must have the original,) I will add the certificate to it, show-

ing the date, book, and number of the record in my office, of the act in question, if it be there recorded, and I have little doubt but that it has been recorded.

Very respectfully,
Your most obt. sevt.,
(Signed) JOHN DUTTON.

No. 33.

NEW ORLEANS, 13*th June*, 1834.

The Hon. JOHN DUTTON.

SIR: Your letter of the 9th inst. has been received, and I am greatly disappointed, injured, and mortified, at your continuing to withhold from me an exemplified copy of your record of the release, by Richard Clague, before Carlile Pollock, the 14th January, 1824, of the mortgage of Nicholas Wilson to William Kenner & Co., of the 5th April, 1820, which release was recorded in your book on or about the 24th January, 1824, and which you say, "you have but little doubt but that it has been recorded."

It is not expedient that I should send you the notarial document you request, it being inconceivable that you should have, between the 4th and 9th of June instant, forgotten where to find the record; aided, as you must have been, by the index thereto. On the 4th, you certified that you, on that day, by *virtue of the said release before Carlile Pollock*, erased the mortgage. How could you have done this, if you had not referred to the record of it? You had not the original certificate of Mr. Pollock, with your certificate of record on it; if you had, you would not have sent to me for a copy, nor could you have procured it from New York.

Mr. Josiah Barker witnessed your reference to your record of said release, when you made the erasure, and gave him a certificate of the fact of the erasure. His certificate is not of any use; it is a certified copy of the authority on your record for making the erasure, that I wanted, and which I continue to want, with evidence when the authority was recorded; it was that record which cancelled the mortgage, and not the word erased, written by you on the 4th of June.

Your obedient servant,
JACOB BARKER.

No. 34.

STATE OF LOUISIANA, *City of New Orleans.*

No. 83, January 24th, 1824.

Be it known, that this day, before me, Carlile Pollock, a notary public, in and for this city of New Orleans, duly commissioned and sworn, personally came and appeared Richard Clague, a copartner of, and herein acting for, the house and trade of William Kenner & Co., who declared that he does, by these presents, release and discharge mortgage granted in their favor by Nicholas Wilson, of the parish of Iberville, in this State, to secure the payment of the sum of twenty thousand dollars, by act passed before John Dutton, judge of the said parish, on the 5th April, 1820, on a plantation, or tract of land, situate in the same parish, on the right bank of the river Mississippi, measuring twelve arpens in front on the river, by eighty arpens in depth; bounded, on the

one side, by lands of Joseph Erwin, and on the other side, by lands of Mistress R. Leonard, and thirty-five slaves, viz: Ben, Rixon, Nathan, Big Charles, Little Charles, John Grigg, Dick, Isaac, Bill, Yellow Joe, Black Joe, Jenny, Fanny, Hannah, Sally, Sal, Rachel, Felicite and her child Henry, Susan, Jack Hunter, Jack Weaver, Jenny, Yellow Isaac, Kizzy, Harriet, Hester, Washington, John Carroll, Mary, Yellow Harriet, Dave, Peter, and Hester; and hereby authorizes the judge of the said parish of Iberville, and the conservator in this city, to cause the said mortgage to be erased from the records of this office.

Done and passed at New Orleans, in the presence of George Pollock and William Boswell, witnesses, who have signed their names with the appearer, and me, the notary, this fourteenth day of January, eighteen hundred and twenty-four. (Signed)

RD. CLAGUE,
GEORGE POLLOCK,
WILLIAM BOSWELL.
CARLILE POLLOCK, *Not. Pub.*

I certify the foregoing to be a true copy of an original act, recorded in my office; as witness my signature and seal of office, this seventeenth day of January, eighteen hundred and twenty-four.

(Signed) CARLILE POLLOCK,
Not. Pub.

I do hereby certify the foregoing to be a correct transcript of a duly authenticated copy of the original act *act* inscribed this twenty-fourth day of January, in the year one thousand eight hundred and twenty-four. A true record, inscribed the twenty-fourth day of January, in the year eighteen hundred and twenty-four.

(Signed) JOHN DUTTON,
Parish Judge of Iberville Parish.

I, John Dutton, parish judge in and for the parish of Iberville, do hereby certify the foregoing to be a full, faithful, and correct copy of a record made in a book of records of *material acts* remaining in my office, designated K, entry No. 83.

In testimony whereof I have hereunto set my hand and public seal, this twentieth day of June, in the year of our Lord one thousand eight hundred and thirty-four.

(Signed) JOHN DUTTON, *Parish Judge.*

No. 35.

To the Honorable Judge Dutton, Judge of the Court of Probates in and for the Parish of Iberville:

The petition of Samuel M. Spragins of said parish,

RESPECTFULLY SHOWS,

That Joseph Erwin, late curator of the estate of Nicholas Wilson, deceased, in said parish, not being willing to continue to act as administrator of the said estate, has given due notice thereof, and made his formal resignation of said trust, and that no other curator has been appointed in his place, or made application to be appointed.

Your petitioner therefore prays that your honor may appoint him curator of the estate of said Nicholas Wilson and authorize him—the said estate, or

such portion thereof as yet remains unadministered, on his giving the security required by law.

(Signed) S. M. SPRAGINS.

Filed in my office the 15th day of August, 1826.

(Signed) JOHN DUTTON, *Parish Judge.*

Let due be given that if any opposition be intended to the granting of the prayer of the foregoing petition, that it be made within ten days from the date hereof. Parish of Iberville, 23d day of August, 1826.

(Signed) JOHN DUTTON, *Parish Judge.*

No opposition having been made to the demand of Samuel M. Spragins, praying for letters of curatorship for the intestate estate of Nicholas Wilson, deceased, it is now ordered and decreed that said letters of curatorship be granted to said Samuel M. Spragins, on his furnishing bond, with sufficient security, in the sum of seventy-four thousand five hundred and thirty-eight dollars and fifty cents, and taking the oath by law required. Parish of Iberville, the 4th day of September, 1826.

(Signed) JOHN DUTTON, *Parish Judge.*

I, Samuel M. Spragins, do solemnly swear, that I will faithfully discharge and perform the duties incumbent on me, as curator to the intestate succession of Nicholas Wilson, deceased, so help me God.

(Signed) S. M. SPRAGINS.

Sworn to and subscribed before me, this 4th day of September, 1826.

(Signed) JOHN DUTTON, *Parish Judge.*

Know all men by these presents, that we, Samuel M. Spragins and Joseph Erwin, are held and firmly bound unto John Dutton, judge of the court of probates in and for the parish of Iberville, his successors in office, and his and their assigns, in the sum of seventy-four thousand five hundred and thirty-eight dollars and fifty cents, and for the payment thereof we bind ourselves firmly by these presents.

The conditons of the above obligation is such, that if the above bounden, Samuel M. Spragins, as curator of the succession of Nicholas Wilson, deceased, shall well and truly perform the duties of the said trust, and shall render a true account of his said administration, and of the property which may come into his hands as such, whenever thereunto required by the said judge or the provisions of law, and shall in like manner pay over the same to the persons entitled thereto, according to the provisions of law or the orders of said judge, then this obligation to be void, or else to remain in full force and virtue.

Done at the parish of Iberville, this 4th day of September, 1826.

(Signed) S. M. SPRAGINS.

In presence of,

Louis Desobry,

Robt. Loyd.

I, John Dutton, parish judge in and for the parish of Iberville, do hereby certify the foregoing to be true copies from the originals remaining in my office.

Given and attested under my hand and public seal, this 30th day of May, A. D. 1834.

JOHN DUTTON, *Parish Judge.*

No. 36.

To the Honorable John Dutton, Judge of the Court of Probates in and for the Parish of Iberville:

The petition of Samuel M. Spragins of said parish,

RESPECTFULLY SHOWS,

That Joseph Erwin, late curator of the estate of Nicholas Wilson, deceased, in said parish, not being willing to continue to act as administrator of the said estate, has given due notice thereof and made his formal resignation of said trust, and that no other curator has been appointed in his place, or made application to be appointed.

Your petitioner therefore prays that your honor may appoint him curator of the estate of said Nicholas Wilson, and authorize him, the said estate, or such portion thereof as yet remains unadministered, on his giving the security required by law.

(Signed) S. M. SPRAGINS.

Filed in my office the 15th day of [*August,**] 1826.

(Signed) JOHN DUTTON, *Parish Judge.*

Let due notice be given that if any opposition be intended to the granting of the prayer of the foregoing petition, that it be made within ten days from the date hereof. Parish of Iberville, 23d day of August, 1826.

(Signed) JOHN DUTTON, *Parish Judge.*

No opposition having been made to the demand of Samuel M. Spragins, praying for letters [*of curatorship for*†] the intestate estate of Nicholas Wilson, deceased, it is now ordered and decreed that said letters of curatorship be granted to said Samuel M. Spragins, on his furnishing bond, with sufficient security, in the sum of seventy-four thousand five hundred and thirty-eight dollars and fifty cents, and taking the oath by law required. Parish of Iberville, the 4th day of September, 1826.

(Signed) JOHN DUTTON, *Parish Judge.*

I, Samuel M. Spragins, do solemnly swear, that I will faithfully discharge and perform the duties incumbent on me as curator to the intestate succession of Nicholas Wilson, deceased, so help me God.

(Signed) S. M. SPRAGINS.

Sworn and subscribed before me, this 4th day of September, 1826.

(Signed) JOHN DUTTON, *Parish Judge.*

Know all men by these presents, that we, Samuel M. Spragins and Joseph Erwin, are held and firmly bound unto John Dutton, judge of the court of probates in and for the parish of Iberville, his successors in office and his and their assigns, in the sum of seventy-four thousand five hundred and thirty-eight dollars fifty cents, and for the payment thereof we bind ourselves firmly by these presents.

* The *word* alluded to in the next page. † In the *margin* in the original.

The condition of the above obligation is such, that if the above bounden Samuel M. Spragins, as curator of the succession of Nicholas Wilson, deceased, shall well and truly perform the duties of the said trust, and shall render true account of his said administrator, and of the property which may come into his hands as such, whenever thereunto required by the said judge, or the provisions of law, and shall in like manner pay over the same to the persons entitled thereto, according to the provisions of law, or the orders of said judge, then this obligation to be void; or else to remain in full force and virtue.

Done, at the Parish of Iberville, this 4th day of September, 1826.

(Signed) J. M. SPRAGINS,
JOSEPH ERWIN.

In presence of,
LOUIS DESOBRY,
ROBT. LOYD.

A true copy of the original remaining in my office.

Given and attested under my hand and public seal, this 19th day of June, A. D. 1834.

Three words, written in the margin of the first page, to follow the word letters, opposite; and one word, in 20th line of the first page, stricken out, and the word *August* written over it. Valid.

(Signed) JOHN DUTTON,
Parish Judge.

No. 37.

DISTRICT COURT OF THE UNITED STATES *for the Eastern District of Louisiana.*

IN EQUITY BETWEEN THE LIFE AND FIRE INSURANCE COMPANY, *Defendants,*
AND
THE HEIRS OF NICHOLAS WILSON, *Complainants.*

The defendants hereby state to this honorable court, that they appeal, and do hereby appeal, to the Supreme Court of the United States, from such part of the order or decree, made in this cause, on the fourth day of June, 1834, and entered with the clerk of this court, as directs the issuing of an injunction, enjoining the U. S. marshal from selling the property advertised to be sold on the 9th June inst., which was seized under an execution, issued out of the United States' district court for the eastern district of Louisiana, on the 19th day of April past, at the suit of The Life and Fire Insurance Company of New York *vs.* The Heirs of Nicholas Wilson.

And the said defendants pray, that the said judgment, order, or decree, may be sent to the Supreme Court of the United States, to be by the said court reviewed.

At foot hereof, the defendants assign the errors complained of.

Josiah Barker, trustee of the claim, to recover which the suit, entitled The Life and Fire Insurance Company of New York *vs.* The Heirs of Nicholas Wilson, was instituted to collect, possessing full authority from the said Life and Fire Insurance Company, on file in the aforesaid district court, to use their name in the premises.

Assignment of Errors.

1st. Because the Life and Fire Insurance Company had parted with all their interest in the said judgment, in July, 1826.

2d. Because the premises in question had been sold and adjudicated, pursuant to directions contained in the execution issued out of the said district court, 19th April, 1834.

3d. Because an offer to pay the amount of the execution, with interest and costs, even in gold and silver, could not vacate a sale once made.

4th. Because the complainants could have obtained all the relief, if any, they were entitled to, for the matters complained of, had they been substantiated in a court of common law.

5th. Because the papers on file in the said district court, referred to and invoked by the complainants, contradicted the material allegations set forth in their petition or bill of complaint.

6th. Because they had applied to the said district court for relief at law, for a portion of the grievances of which they complain, previous to such sale, which relief was denied.

7th. Because, they then omitted to present their whole case.

8th. Because they, shortly before such sale, applied to the equity side of this court, for relief in the premises, and were denied.

9th. Because, in their amended petition or bill of complaint, they do not aver to have discovered any new matter or thing not known to them when they presented their original bill or petition.

10th. Because they kept back certain allegations with an express view of making a second application, if the first failed.

11th. Because the complainants cannot regain, by an appeal to the equity side of the court, that which they may have lost either by not appealing within the time limited by law for appeals, or by the want of diligence in conducting their defence.

12th. Because the complainants asked relief on the plea of usury, without having paid or offered to pay, or deposited in court the amount of money confessed by their said petition or bill of complaint to have been received.

13th. Because the complainants did not deposite in court the bonds of these defendants, which they allege to have tendered, or to have been ready to tender in their bill of complaint.

14th. Because the defendants had not reasonable notice of the intended application for an injunction.

15th. Because his honor Judge Harper refused to allow the defendants to rebut the allegations of the petition or bill of complaint, either by affidavit, oral testimony, or by reading the pleadings and original papers in the cause, entitled "The Life and Fire Insurance Company of New York vs. The Heirs of Nicholas Wilson."

16th. Because the claim, to collect which the said execution was issued, was exclusively the property of the Mercantile Insurance Company of New York, of which the complainants had due notice, before they pretend to have had any claims on these defendants.

17th. Because these defendants have become insolvent after the rendering of the judgment in question in their favor, and their funds and effects had passed into the hands of receivers in chancery, before the complainants pretend to have had any claims upon these defendants; proof of their appointment is on file in this honorable court.